Supreme Court, U. S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1243

ALVIN A. BECKWITH, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOHN G. GILL, JR.
22 West Jefferson Street
Rockville, Maryland 20850
Attorney for Petitioner.

April 2, 1975

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TABLE OF CONTENTS

Page

OPINIONS BELOW 1
JURISDICTION 2
QUESTION PRESENTED 2
CONSTITUTIONAL PROVISIONS INVOLVED 2
STATEMENT 3
ARGUMENT
I. At the Time of the Interview, Petitioner Was a Virtual or Putative Defendant 6
II. Conflict in the Circuits 8
III. Importance of This Case 10
CONCLUSION 11

TABLE OF CITATIONS

Cases:

Green v. United States, 411 F.2d 588 (10th Cir.) 8
Miranda v. Arizona, 384 U.S. 436 . . . . . *passim*
Orozco v. Texas, 394 U.S. 324 6
Pettyjohn v. United States, 136 U.S. App. D.C. 69, 419 F.2d 651, 652 8
United States v. Dickerson, 413 F.2d 1111 (7th Cir.) 9
United States v. Fox, 403 F.2d 97 (2nd Cir.) 7
United States v. Mandujano, 496 F.2d 1050 (5th Cir.) 7
United States v. Miller, 261 F. Supp. 442 (D. Del.) 8
United States v. Mullings, 364 F.2d 173, (2nd Cir.) 7
United States v. Robinson, 142 U.S. App. D.C. 43, 439 F.2d 553 7

Cases, continued: Page

United States v. Turzyanski, 268 F. Supp. 847 (N.D. Ill.) 9

United States v. Wong, 74-1636 (9th Cir., Sep. 23, 1974) 7

Constitutional Provisions:

Constitution of the United States
Amendment V 2
Amendment VI 2

Miscellaneous:

28 United States Code §1254(1) 2

U.S. Tax Cases, CCH 67-2, p. 84, 574 ¶9489 7

TABLE OF CONTENTS OF APPENDIX

APPENDIX A

Opinion of the United States Court of Appeals for the District of Columbia Circuit 1a

APPENDIX B

Oral Opinion of the District Court 1b

Press Release 3b

Rights Read to Petitioner 4b

Miranda Warning Approved by District of Columbia Circuit 4b

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No.

ALVIN A. BECKWITH, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

OPINIONS BELOW

The opinion of the Court of Appeals (App. 1a) is not yet reported. The District Court wrote no opinion but gave an oral ruling which is reproduced herewith (App. 1b).

JURISDICTION

The opinion of the Court of Appeals was filed on January 22, 1975. Petitioner filed a timely petition for re-hearing and suggestion for re-hearing *en banc*, which was denied by order of the Court of Appeals filed March 3, 1975. This petition is being filed within thirty days of that order. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Fifth and the Sixth Amendments to the Constitution of the United States entitled petitioner to complete *Miranda* warnings by Special Agents of the Intelligence Division of the Internal Revenue Service during the "critical" August 2, 1972, interview, which interview took place during the accusatory stage of a solely criminal tax investigation at a time when appellant was a "target defendant" and the subject of "legal harassment" by the Government which believed petitioner to be an illegal narcotics trafficker but had absolutely no proof of such criminal activity?

CONSTITUTIONAL PROVISION INVOLVED

Constitution of the United States of America,

Amendment V:

> No person shall be * * * compelled in any criminal case to be a witness against himself, nor to be deprived of life, liberty, or property, without due process of law; * * *

Amendment VI:

> In all criminal prosecutions, the accused shall * * * have the assistance of counsel for his defense.

STATEMENT

Petitioner was charged with two (2) counts of attempting to Evade and Defeat Federal Income Taxes in violation of 26 U.S.C. §7201 by indictment filed June 6, 1973, in the District Court for the District of Columbia. On October 4, 1973, the Honorable Aubrey Robinson heard and denied petitioner's Motion to Suppress Statements and Evidence. Thereafter on March 21, 1974, petitioner waived his right to jury trial and was found guilty on a stipulated record as to Count 2 of the indictment. On May 2, 1974, petitioner was given a maximum sentence of five (5) years imprisonment plus a $10,000 fine plus court costs. Count 1, which had been severed on the date of trial was then dismissed. Upon his appeal to the District of Columbia Circuit, his conviction was affirmed and his petition for rehearing and suggestion for re-hearing *en banc* to that Court were denied.

The theory of prosecution upon which petitioner stands convicted was the "net worth" method of proving a criminal understatement on his 1971 Federal Tax Return. Prior to trial, petitioner, his trial counsel, and the Government entered into a detailed stipulation covering some 60 items and nine pages of exhibits (R. 13). This stipulation saved the prosecution from calling over 100 witnesses.

Crucial to the prosecution's case was stipulation number 2 which covered some 10 different statements made by petitioner during his initial interrogation by two Special Agents of the Intelligence Division of the Internal Revenue Service on August 2, 1972. These statements of defendant covered his sources of income prior to 1972, his cash on hand each year from 1965 through 1971 and certain other important facts concerning the preparation of the computations on his 1971 Federal Income

Tax Returns. There is substantial agreement between the parties that, without the starting point provided by Stipulation No. 2, the prosecution would not have had a provable case against petitioner.

It was from the starting point provided by petitioner's August 2, 1972 statements that a taxable income of $24,638.02 was computed for petitioner in 1971. This in turn showed a criminal understatement of $13,815.24 and an income tax deficiency of $5,895.54 (Stipulation No. 24, R. 13, pp. 6-7). Petitioner presented no factual defense to the stipulated record (Stipulation No. 26) and was thus found guilty.

Prior to trial, petitioner moved to suppress all statements he made to Special Agents of the Internal Revenue Service on August 2, 1972. At the hearing the Court noted (Tr. 10-11), and the Government conceded (Tr. 23), that the involved Special Internal Revenue Agents "were focusing on this defendant" from the outset and that the IRS never had any civil intention with respect to petitioner. Further, it was clear, and the judge took into account, that petitioner had been labeled as a target by the Justice Department and the criminal investigation conducted thereafter was directed only at returning an indictment against him. (See Press Release App. 3b) [1]

Evidence at this hearing showed that petitioner was a 44-year old, black, ninth-grade dropout who never had any contact with the preparation of tax returns. Although he had had an accountant file returns for him in the past, he had never prepared nor filed a tax return in his entire life and, although he had been once previously arrested in 1963, he had never theretofore been

[1] This Press Release was considered by the trial judge (Tr. 121) and appeared in the record below at R. 7, p. 14, Exhibit A.

advised of his constitutional rights to counsel and against self-incrimination. (Tr. 86-88).

The two Special Agents who conducted the August 2, 1972 interview testified that they were members of the Intelligence Division and their function was exclusively concerned with criminal violations of the Revenue laws. On said date they made their initial unannounced appearance at petitioner's home at 8:00 A.M. After petitioner finished dressing, they read to him from a form card printed by the Internal Revenue Service (Tr. 30-31) (R. 7, p. 15) (App. 4b). As is apparent, the Agents' warning to Petitioner gave some advice as to his constitutional right to silence and counsel, but fell far short of the minimum rights required by this Court in *Miranda v. Arizona*, 384 U.S. 436. Petitioner was not told "he had a right to remain silent or not to answer any questions." Nothing was said to petitioner "about net worth or about proving understatement of income or cash expenditure theories or anything like that" (Tr. 34-35). Indeed, after questioning petitioner for from fifteen to thirty minutes, Special Agent Peterson felt it necessary to determine if petitioner was able to read. Thereafter, the questioning continued until about 11:00 A.M. without a break. (Tr. 38-41.) At that time the Special Agents requested that petitioner produce corporate books and records from the store where he was employed. Without seeking the advice of counsel, petitioner took the Special Agents directly to his place of business and turned over the requested records. (Tr. 48.)

Thereafter, in June of 1973, petitioner was indicted via original action of the Grand Jury and these Special Revenue Agents, accompanied by two agents from the Bureau of Narcotics and Dangerous Drugs, effected petitioner's arrest at his place of business. Petitioner has

never been arrested for, nor charged with, the violation of any narcotic law.

Thereafter, the trial judge denied defendant's motion to suppress these statements and everything that flowed from them. In entering into Stipulation No. 2, which was based on the August 2, 1972 interview and which formed the entire basis for the net worth theory of prosecution of the Government, it was clear that petitioner did not waive his challenge to the legality of the interview and the admissibility of said statements at trial.

ARGUMENT

I.

AT THE TIME OF THE INTERVIEW, PETITIONER WAS A VIRTUAL OR PUTATIVE DEFENDANT.

It is clear that the minimum requirements of *Miranda v. Arizona*, 384 U.S. 436, apply to tax investigations. *Mathis v. United States*, 391 U.S. 1. It is also clear that the mere fact that the interview took place in petitioner's home does not relieve the Government from the minimum requirements of *Miranda*. *Orozco v. Texas*, 394 U.S. 324. While the Court of Appeals below rejected petitioner's *Miranda* arguments on the ground that he was not in custody, petitioner respectfully submits that such a wooden holding is inconsistent with this Court's intendment of when *Miranda* requirements apply and further that it ignores the record's showing that, at the time of the interview, petitioner was a virtual or putative defendant, a target for the application of the criminal tax laws by Special Agents of the Intelligence Division who were set upon convicting petitioner, not for suspected tax violations, but for alleged, but unprovable narcotics violations. This Court explained what it meant by "custodial circumstances" in *Miranda* when in Foot-

note 4, it described them as an "investigation which had focused on an accused." (384 U.S. 436, 444.) This case is quite close to the fact situation in *United States v. Mandujano*, 496 F.2d 1050 (5th Cir.) which holds that full *Miranda* warnings must be accorded a person who, at the time he testifies before the Grand Jury, is a "putative or virtual defendant." See also *United States v. Wong*, 74-1636 (9th Cir., Sept. 23, 1974). Heretofore, courts have not exclusively looked to prison walls, handcuffs, or back room police station physical restraint as the touchstone of *Miranda*. They have also taken note of the focus of the investigation upon the accused and the "target" of the Government investigators. *Orozco v. Texas, supra*. *United States v. Robinson*, 142 U.S. App. D.C. 43, 439 F.2d 553.

Here petitioner was given only a semblance of the advice of rights to which *Miranda* has entitled him.[2] Petitioner was not told of his absolute right to remain silent nor to refuse to answer questions if said questions tended to incriminate him. The courts implementing *Miranda* have jealously guarded the exact substance of this right. *United States v. Mullings*, 364 F.2d 173, 175 (2nd Cir.); *United States v. Fox*, 403 F.2d 97, 100 (2nd Cir.). In *Miranda*, this Court held that as an "absolute prerequisite to interrogation" the person must be told of the "right to consult with a lawyer and to have the lawyer with him during interrogation" (384 U.S. 471). Here the Special Agents told petitioner "[Y]ou may, if

---

[2] The IRS itself recognizes that the warnings given by a special agent during an interview do not comply with *Miranda*. Instructions issued to IRS special agents provide for full *Miranda* warnings only when the person is taken into custody or placed under arrest. See *U.S. Tax Cases*, CCH 67-2, p. 84,547, Par. 9489 n.3. (R. 9, p. 19.)

you wish, seek assistance of an attorney before responding." Such a watered-down explanation of this right has been held inadequate. *Windsor v. United States*, 389 F.2d 530 (5th Cir.). In addition, absolutely nothing was told to petitioner about his rights to an appointed attorney.[3] Since the date of the *Miranda* decision, courts have suppressed statements which did not include this portion of the required warning. *Green v. United States*, 411 F.2d 588 (10th Cir.); *United States v. Miller*, 261 F. Supp. 442 (D. Del.)[4]

II.

CONFLICT IN THE CIRCUITS.

The usual Federal tax investigation has two possible stages: first, the civil stage where an audit is conducted by Revenue agents and possibly, second, the criminal stage where a Revenue agent has uncovered fraud and has turned the case over to the Special Agents of the Intelligence Division whose job is limited to obtaining evidence in support of criminal tax fraud prosecutions. As has been outlined heretofore, petitioner's case involved only Special Agents of the Intelligence Division whose exclusive function was to prepare evidence for the prosecution of petitioner.

---

[3] This Court's decision in *Michigan v. Tucker*, 94 S. Ct. 2357, is not to the contrary, since that case concerned the question whether an inadequate *Miranda* warning could taint other evidence which police uncovered by virtue of statements that were suppressed.

[4] See the complete advice of rights of the District of Columbia Metropolitan Police Department at App. 4b which has been held to comport fully with *Miranda*. *Pettyjohn v. United States*, 136 U.S. App. D.C. 69, 70 n.3, 419 F.2d 651, 652 n.3, *cert. denied*, 397 U.S. 1058.

The law in the Seventh Circuit is that, whenever a case has shifted to the Intelligence Division of the Internal Revenue Service, the involved taxpayer must be accorded the benefit of full *Miranda* warnings. *United States v. Dickerson*, 413 F.2d 1111 (7th Cir.). In reaching its decision on this issue, the Seventh Circuit Court of Appeals relied heavily upon the District Judge in *United States v. Turzyanski*, 268 F. Supp. 847 (N.D. Ill.), who ruled as follows:

> [O]nce a taxpayer becomes the subject of a criminal tax investigation, as evidenced by the referral of the investigation to the Intelligence Division or otherwise, our adversary process of criminal justice has become directed against him as a potential defendant. Any evidence obtained from him is admissibly only if the taxpayer furnished it after knowingly and voluntarily waiving his Constitutional rights and privileges. [Citations omitted.]
>
> To hold otherwise would lead to the anomalous conclusion that a person suspected of bank robbery, sale of narcotics, murder, rape or other serious crime is entitled to greater protection of his constitutional rights than a person suspected of violating the internal revenue laws. For when the silent transition from civil to criminal investigation takes place in a tax case, the taxpayer being interrogated and asked to furnish his books and records is just as surely a prime suspect and candidate for criminal prosecution as the individual under interrogation as a suspect for other crimes. (Id. at 850-851.)

The decision of the United States Court of Appeals for the District of Columbia in this case is in square conflict with the above rule of the Seventh Circuit and a need for uniformity of decision exists.

III.

THE IMPORTANCE OF THIS CASE.

In the light of this nation's recent experience with an Administration's compiling "enemies lists" and utilizing the Internal Revenue Service to "harass" citizens because of their unpopular political views or for other non-tax-related reasons, this case clearly involves a question of exceptional importance meriting consideration by this Court. Because this country utilizes a system of self-taxation and because our tax laws are so technical and complex, there exists, on the part of those who administer those tax laws, a great potential to abuse the Fifth Amendment's privilege against self-incrimination. The legality of the Government's labeling a citizen a target defendant for a non-tax-related reason and then proceeding to harass him and to convict him out of his own mouth without extending him the full panoply of Fifth Amendment rights is a question of far-reaching significance. E.g., this case presents an excellent opportunity for judicial consideration of the propriety of the anomalous situation existing with respect to Special Agents of the Intelligence Division of the Internal Revenue Service. It is counsel for petitioner's understanding that the involved Intelligence Division of the Internal Revenue Service is this country's only criminal law enforcement agency that has, as a matter of routine, substituted its own limited advice of rights for those set out by this Court in *Miranda v. Arizona*.

CONCLUSION

WHEREFORE, it is submitted that this Court should grant this petition and issue a writ of *certiorari* to the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

JOHN G. GILL, JR.
22 West Jefferson Street
Rockville, Maryland 20850
Attorney for Petitioner.

April 2, 1975

APPENDIX A

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S. App. D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 74-1592

UNITED STATES OF AMERICA

v.

ALVIN A. BECKWITH, JR.,
A/K/A ALVIN A. BECKWITH, APPELLANT

Appeal from the United States District Court
for the District of Columbia

(D.C. Criminal 480-73)

Decided January 22, 1975

John G. Gill, Jr., for appellant.

Earl J. Silbert, United States Attorney, *John A. Terry*, *Barry W. Levine* and *Raymond J. Coughlan, Jr.*, Assistant United States Attorneys, were on the brief for appellee.

Before: BAZELON, *Chief Judge*, TAMM and ROBB, *Circuit Judges*

Opinion for the Court filed by *Chief Judge* Bazelon.

BAZELON, *Chief Judge*: Agents of the Intelligence Division of the Internal Revenue Service visited appellant Alvin Beckwith at the home of a friend on August 2, 1972. On the basis of information obtained in that visit and of other information Beckwith was indicted and subsequently convicted on March 21, 1974, of one count of attempting to evade or defeat federal income taxation.[1] On October 4, 1973, previous to this conviction, Beckwith moved to suppress all the statements made during the course of the interview conducted at his friend's home in August, 1972, charging that the interview violated his rights guaranteed by the Fifth Amendment to the Constitution. In particular, he alleged that since the Intelligence Division had singled him out for prosecution on the basis of his alleged gambling activities prior to the interview, the interview was in its nature coercive and tended to compel him to incriminate himself. The District Court rejected this argument and Beckwith now appeals from his conviction, arguing that the District Court was mistaken in this respect. We affirm.

Beckwith's argument is based upon *Miranda v. Arizona*, 384 U.S. 436 (1966) as that case was applied to criminal tax investigations in *Mathis v. United States*, 391 U.S. 1 (1968). However, those cases involved police interrogation in so-called "custodial" circumstances. Their reasoning is based in crucial part on this fact[2] and cases following upon those seminal decisions have limited their principle to such "custodial" circumstances.[3] Beckwith

[1] *See* 26 U.S.C. § 7201 (1970). Beckwith was indicted for two counts, sent to trial on the first and after conviction the second count was dropped.

[2] *See* 384 U.S. at 444-50.

[3] *See* Orozco v. Texas, 394 U.S. 324 (1969); Hoffa v. United States, 385 U.S. 293, 304 (1966); United States v. Scully, 415 F.2d 680 (2d Cir. 1969); *cf.* Michigan v. Tucker, 417 U.S. 433 (1974). *See also* the reasoning of United States v. Stamp, 458 F.2d 759 (D.C. Cir. 1971), *cert. denied*, 406 U.S. 975 (1972); United States v. Robinson, 439 F.2d 553 (D.C. Cir. 1970); United States v. Wong, No. 74-1636 (9th Cir. Sept. 23, 1974) (coercion in grand jury interrogation). This has been repeatedly emphasized in tax investigation cases. *See, e.g.*, United States v. Robson, 477 F.2d 13 (9th Cir. 1973); United States v. Engle, 458 F.2d 1017 (8th Cir.), *cert. denied*, 409 U.S. 875 (1972); United States v. Jaskiewicz, 433 F.2d 415 (3d Cir. 1970), *cert. denied*, 400 U.S. 1021 (1971); United States v. Squeri, 398 F.2d 785 (2d Cir. 1968).

does not and could not reasonably assert that his interrogation was in custodial circumstances. While the meaning of "custodial" circumstances can include interrogation at a private home,[4] it does not always. Rather the test is whether the suspect "has been taken into custody or otherwise deprived of his freedom in any significant way."[5] Here Beckwith was neither arrested nor detained against his will. He was not subject to formal interrogation before a grand jury. The record reflects no use of any police interrogation techniques or any sort of browbeating. He was free to leave at any time and in fact was out of the agents' presence more than once. Indeed, one of Beckwith's complaints is that the meeting was so friendly that he was deceived into believing that he was not incriminating himself.

The major thrust of Beckwith's argument is that the principle of *Miranda* and *Mathis* should be extended to cover interrogation in non-custodial circumstances after a police investigation has focused on the suspect. We are not impressed with this argument in the abstract nor as applied to the particular facts of Beckwith's interrogation. His interview had none of the indicia of coercion that motivated the *Miranda* scrutiny of investigative methods and thus it cannot be seriously argued that

[4] Orozco v. Texas, 394 U.S. 324 (1969).

[5] Miranda v. Arizona, 384 U.S. 436, 477 (1966).

Beckwith was "compelled" to answer any questions. Furthermore, the agents did give Beckwith a modified *Miranda* warning which while not in full compliance with *Miranda* does give the suspect some notice that his statements might be used against him.[6] The extent to which such a warning must be given is not implicated in this case. Beckwith's argument apparently confuses the requisites of *compulsion* which bring to bear Fifth Amendment interests with the requisites of a *waiver* of Fifth Amendment rights once those rights attach.[7] The fact that a statement might be made in such a manner as to raise doubts that it constitutes a voluntary and intelligent waiver of the right to counsel and the right to remain silent does not necessarily mean that it was coerced or compelled within the intendment of the Self-Incrimination clause. Therein lies Beckwith's error. In *Miranda* and *Mathis* the Court found that custodial interrogations were inherently coercive and statements made therein necessarily compelled. Once having made that judgment, it followed inexorably that only a complete waiver of the Fifth Amendment and Sixth Amendment rights during interrogation would cleanse such statements from the taint of compulsion. But Beckwith's statements need not be found to be a waiver since no right had attached which he was in a position to waive.[8]

---

[6] The following warning was given:

> Under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding.

[7] *Cf. Michigan v. Tucker*, 417 U.S. 433, 444 (1974).

[8] *Cf.* United States v. Stamp, 458 F.2d 759, 780-81 (D.C. Cir. 1971), *cert. denied*, 406 U.S. 975 (1972). The only case supporting Beckwith's argument is United States v. Dickerson, 413 F.2d 1111 (7th Cir. 1969). That case might be distinguished since no warnings whatsoever were given and the court might well have been simply too broad in its remedial assertion that the full panoply of *Miranda* rights attached in a noncustodial interrogation. In any event, we are not impressed with the assertion that Beckwith's interrogation was coercive within the intendment of *Miranda* whatever may have been the factual situation in *Dickerson*.

It follows from the preceding discussion that the proper inquiry is not whether Beckwith waived anything but whether his statements to the agents were voluntary. We find that they are. There is no claim that Beckwith's mental condition or education were so limited that he was particularly susceptible to interrogation. Furthermore, a modified warning was given, no unusual interrogation techniques were employed and the agents did not, contrary to Beckwith's claim, mislead him as to their purpose in interrogating him. The entire interview was free of coercion[9] and it follows that the District Court properly refused to suppress Beckwith's statements. Beckwith's conviction is, therefore,

Affirmed

---

[9] *See* Frazier v. Cupp, 394 U.S. 731 (1969); United States v. Stamp, 458 F.2d 759 (D.C. Cir. 1971), *cert. denied*, 406 U.S. 975 (1972); United States v. Robinson, 439 F.2d 553 (D.C. Cir. 1970); United States v. Jaskiewicz, 433 F.2d 415 (3d Cir. 1970) and authorities cited.

APPENDIX B

ORAL OPINION OF THE DISTRICT COURT

* * *

[141] THE COURT: You keep talking about civil ripening into criminal. There is no civil involved in this matter and there is no suggestion in the evidence anywhere that this is a civil matter or ever was a civil matter. There is no evidence before me that it ever started out one way and went on in another way.

MR. HOFFMAN: Your Honor, our position is that if this case was a criminal matter then it should have been treated in that respect. If that is the case it should have been treated that way and I am not arguing to the court to expand Miranda, to mean that Mr. Beckwith ought to have had any short courses in tax law or anything of that sort, but I am merely saying that he was entitled to at least the same as other people accused of crimes and not less. I am only asking for equal treatment of this defendant and that is one thing that he didn't get.

THE COURT: No, he is entitled to it when the court finds as a fact that there were custodial circumstances. I have to find a situation that required it and I find on this record that there is no evidence whatsoever of any such situation. I find that he knew that they were investigating his taxes and he knew for what years and the knew the possibility [142] of criminal involvement. He knew he could have a lawyer and he knew that he didn't have to say anything to them about it if he didn't want to.

He knew all of that; he knew all of that and there is nothing that I see here to suggest that the basic criteria

usually found by the courts that would require any further expansion exists in this case.

My understanding of the law is that Miranda warnings are required in tax cases only when the underlying evil which Miranda sought to guard against arises in which case the court must inquire as to when the process passes from the investigatory to the accusatory stage – and here it is from the very beginning – when the defendant became a suspect of specific crime, when the defendant was subject to a psychologically coercive atmosphere of government interrogation or demands for financial records or when his freedom of action was significantly infringed.

When you have a fact situation that suggests that, the law, as I understand it, requires the litany of Miranda, requires the exposition of the rights, broader than they were expounded in this case, and I find from the evidence, and it is uncontradicted, that his basic rights were in fact explained to him.

This is not a situation in which they said anything other than "we are IRS agents, sit down, we would like to ask [143] you some questions."

The Motion to Suppress is denied.

* * *

EXHIBIT "A"

(R. 7, p. 14)

D.C. Liquor Seller Held In Tax Case

The manager of a D.C. liquor store has been indicted by a special U.S. District Court grand jury on charges of federal income tax evasion.

1818 Q St. SE, was indicted by Alvin A. Beckwith Jr., of 1818 G St. SE, was indicted by the jury last week on charges of understating his income for the tax years of 1970 and 1971 by $19,000. Sources in the U.S. attorney's office said the indictment was part of a continuing program that has been described by that office as "legal harassment" of persons whom they believe to be connected with underworld narcotics activity here.

A press release by the U.S. attorney's office pointed out that Beckwith, who manages the Colorado Liquor Store, 5514 Colorado Ave. NW, was arrested by Bureau of Narcotics and Dangerous Drugs agents as well as Internal Revenue agents.

Beckwith is free on personal bond.

BEST COPY AVAILABLE

[Rights read to Petitioner (R. 7, p. 15)]

"Under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding."

(Miranda Warning approved by District of Columbia Circuit *Pettyjohn v. United States*, 136 U.S. App. D.C. 69, 70 n.3, 419 F.2d 651, 652 n.3)

"WARNING AS TO YOUR RIGHTS

You are under arrest. Before we ask you any questions, you must understand what your rights are. You have the right to remain silent. You are not required to say anything to us at any time or to answer any questions. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning. If you cannot afford a lawyer and want one, a lawyer will be provided for you. If you want to answer questions now without a lawyer present, you will have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer."

Supreme Court, U. S.
FILED
AUG 20 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1243

ALVIN A. BECKWITH, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO
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Washington, D.C. • THIEL PRESS • (202) 638-4521

PETITION FOR CERTIORARI FILED APRIL 2, 1975
CERTIORARI GRANTED JUNE 16, 1975

TABLE OF CONTENTS

	Page
Docket Entries	1
Grand Jury Charge	5
Excerpts from Transcript of Proceedings	7
Memorandum of Interview of 8/2/72	65
IRS News Release of 11/26/68	67
Press Release	69
Stipulation (Excerpted)	70
Judgment/Commitment Order	73

DOCKET ENTRIES

ROBINSON, J.

CRIMINAL DOCKET
United States District Court for the District of Columbia

UNITED STATES
vs.
ALVIN A. BECKWITH, JR.,
aka Alvin A. Beckwith

PDID 146068
DOB 8/13/29

U.S. Attorney
HARDY & LEVINE

JOHN G. GILL, JR. (Ret)
22 West Jefferson Street
Rockville, Maryland 20850

G.J. ORIGINAL
Criminal No. 480-73

CHARGE: 26 USC 7201
(Attempt to Evade and Defeat Tax)

DATE FILED: 6/12/73
BOND: PR w/conds – 1818 Que St., SE

DATE	PROCEEDINGS
1973	
June 6	Indictment Filed – Sealed by Direction of Court (2 counts)
June 6	PRESENTMENT made and indictment filed in Open Court; Oral motion of Govt to seal indictment; Indictment ordered sealed. BENCH WARRANT ordered and issued. HART, J Rep – E.A. Kaufman
June 8	INDICTMENT ordered UNSEALED. ROBINSON, J
June 12	ARRAIGNED: Copy of indictment given deft; PLEA OF NOT GUILTY entered deft

DATE	PROCEEDINGS
	granted 20 days to file motions; Calendar Call set 7-27-73; personal recognizance (Order signed). ROBINSON, J Rep – D. Spencer Herbert Hoffman, Atty ORDER for release on personal recognizance with conditions. ROBINSON, J Deft released from Courtroom.
June 29	MOTION for extension of time to file motions; P/A; c/s. MOTION for a Bill of Particulars; P/A; c/s.
July 9	MOTION for discovery and inspection; c/s; p/a. (FIAT) ROBINSON, J.
July 19	BENCH WARRANT ISSUED 6-6-73 returned executed. Deft. released on 6-6-73 on $5,000 bond.
July 27	MOTION to suppress statements and evidence; c/s; p/a. EXHIBITS A and B. (FIAT) ROBINSON, J. MOTION for subpoena and discovery and inspection (Set No. 2); c/s; p/a. (FIAT) ROBINSON, J.
July 27	CALENDAR CALL. Govt. granted 2 weeks to respond to defts. pending motion; personal recognizance. ROBINSON, J. Rep: D. Spencer – H. Hoffman
Sept. 19	OPPOSITION OF Government to motion to suppress statement and points and authorities in support thereof; exhibit A&B; c/s.
Oct. 4	MOTION of deft. for subpoena, heard and denied.

DATE	PROCEEDINGS
	MOTION of deft. to suppress, heard and denied. PROPOSED stipulation to be submitted by Govt. by 10-23-73. Deft. granted 2 weeks to respond. Pretrial set 11-7-73 at 4:00 p.m.; personal recognizance. ROBINSON, J. Rep: J. Blair H. Hoffman, Atty.
Oct. 31	GOVERNMENT'S proposed items of stipulation; C/S
Nov. 14	TRANSCRIPT OF PROCEEDINGS OF 10-4-73; Pages 1-149; Court copy; Rep - J.C. Blair
Nov. 16	Pre-trial; Further pre-trial set 12/14/73 at 10:00 A.M.; Personal Recognizance. ROBINSON, J. Rep – D. Spencer H. Hoffman, Atty
Dec. 14	Called for Further Pre-trial: Pre-trial continued indefinitely; Calendar Call to be set after 1st of 1974. ROBINSON, J Rep - D. Spencer Herbert Hoffman, Atty
1974	
Feb 8	CALENDAR CALL continued. (In Chambers) ROBINSON, J.
Mar 21	CALLED FOR TRIAL: Waiver of Trial by Jury filed; ORAL Motion of both counsel that Count 1 be severed from Count 2, heard & granted; Count 2 to be decided by Court on Stipulation of Facts; COURT FINDS Defendant GUILTY on COUNT 2 (Attempt to evade & defeat tax); Count 1 will be dismissed by Government at time of sentencing; Referred for expedited

DATE	PROCEEDINGS
	probation report; Personal Recognizance; Stipulation of Facts as to Count 2 filed. ROBINSON, J. Rep - D. Spencer Herbert Hoffman, Atty
May 2	SENTENCE: 5 years; $10,000.00 fine plus court costs; Personal Recognizance pending appeal. Judgment & Commitment Filed. ROBINSON, J. Rep: G. Fedoration & D. Spencer H. Hoffman, Atty.
May 2	NOTICE of appeal from sentence of 5-2-74; $5.00 paid and credited to U.S.
May 2	COPIES of docket entries to AUSA & USCA, Copies of Notice of Appeal to AUSA, USCA, Atty & Deft.
May 6	ORDER dated 5-2-74 releasing defendant on Personal Recognizance with conditions Pending Appeal. Defendant released from Courtroom. ROBINSON, J.
May 31	APPEARANCE of John G. Gill, Jr. entered as retained counsel.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

1975	
Jan. 22	Opinion & Judgment affirming conviction.
Mar. 3	Order denying Petition for Rehearing and Suggestion for Rehearing *en banc*.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on October 2, 1972

UNITED STATES OF AMERICA	:	Criminal No. 480-73
v.	:	Grand Jury Original
ALVIN A. BECKWITH, JR. also known as ALVIN A. BECKWITH	:	Violation: 26 U.S.C. 7201 (Attempt to Evade and Defeat Tax)

The Grand Jury charges:

FIRST COUNT:

That on or about the 15th day of April, 1972, in the District of Columbia, Alvin A. Beckwith, Jr., also known as Alvin A. Beckwith, a resident of the District of Columbia, who during the calendar year 1970 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1970, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed, in the District of Columbia, a false and fraudulent income tax return on behalf of himself and his said wife, which was filed with the Director of the Mid-Atlantic Service Center of the Internal Revenue Service in Philadelphia, Pennsylvania, wherein it was stated that their taxable income for said calendar year was the sum of $6,829.55 and that the amount of tax due and owing thereon was the sum of $1,186.61; whereas, as he then and there well knew, their joint taxable income for the said calendar yearwas the sum

of $11,877.17, upon which said taxable income they owed to the United States of America an income tax of $2,288.80. (In violation of Section 7201, Internal Revenue Code; 28 U.S.C., Section 7201)

SECOND COUNT:

That on or about the 17th day of April, 1972, in the District of Columbia, Alvin A. Beckwith, Jr., also known as Alvin A. Beckwith, a resident of the District of Columbia, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1971 by preparing and causing to be prepared, by signing and causing to be signed, in the District of Columbia, a false and fraudulent income tax return which was filed with the Director of the Mid-Atlantic Service Center of the Internal Revenue Service in Philadelphia, Pennsylvania, wherein he stated that his taxable income for said calendar year was the sum of $10,821.78 and that the amount of tax due and owing thereon was the sum of $2,452.97; whereas, as he then and there well knew, his taxable income for the said calendar year was the sum of $24,638.02, upon which said taxable income he owed to the United States of America an income tax of $8,348.51.

(In violation of Section 7201, Internal Revenue Code; 26 U.S.C., Section 7201)

/s/ Harold H. Titus, Jr.

Attorney of the United States in and for the District of Columbia

A TRUE BILL:

Foreman.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

[10] THE COURT: Mr. Hoffman contends that he has problems knowing from the record how this entire investigation arose and there has to be determined on the motion to suppress, whether or not at the time these agents talked with Mr. Beckwith at his home the circumstances were such that under the most liberal interpretation of or application of Miranda type warnings in a tax situation, there was in fact a situation which required those warnings.

Now, if the government concedes on the record that from the outset they were investigating this defendant for the possibility of bringing a criminal action against him, then it sets the stage for an inquiry as to exactly what went on when they interviewed him. So that, in essence, is Mr. Hoffman's position, but, unlike Mr. Hoffman, I do not think there is any necessity to inquire into all of the records with respect to this in order to make that determination.

I think that determination can be made by an inquiry of the agents.

MR. LEVINE: We would have no objection upon a proffer of relevance, Your Honor.

THE COURT: I think for the purpose of this motion [11] the government can see from the outset that, as Mr. Hoffman tells us about it, they were focusing on this defendant. There is no question about that.

MR. LEVINE: Focusing in the Jencks sense, Your Honor, not in the sense of Escobedo or Miranda. The focusing in Escobedo, of course, being one of custody.

THE COURT: You keep arguing custody. You know, you read the law more stringently than the cases that have come down.

MR. LEVINE: We are prepared to argue that, Your Honor.

THE COURT: There are extensive discussions about the breadth of Miranda or the application of the Miranda situation in tax cases.

MR. LEVINE: Yes, Your Honor.

THE COURT: And there is a considerable body of opinion, indeed, that holds that it is just not only the custody aspect of it when it is a situation where, as some courts have said, factually, although there may not have been technical custody for any period of time, to all intents and purposes the factual context in which the agents interrogated a taxpayer may be such that he had been overreached because he had not been adequately advised.

Now you will concede to that, will you not, Mr. Levine?

* * *

[19] GARY ROGER PETERSON

was called as a witness on the motion and having been first duly sworn was examined by counsel and testified as follows:

DIRECT EXAMINATION

BY MR. HOFFMAN:

Q. Would you state your full name for the record, please? A. My name is Gary Roger Peterson.

Q. How are you presently employed? [20] A. I am employed by the Internal Revenue Service, Baltimore District, and I am stationed in Washington, D. C.

Q. What is your designation with the IRS? A. I am Special Agent with the Intelligence Division.

Q. How long have you been a Special Agent? A. I have been a Special Agent since July of 1968. A little over five years.

Q. Have you always been stationed in Washington? A. Yes sir, I have.

Q. Did there come a time, Agent Peterson, when you became familiar with someone by the name of Alvin Beckwith? A. Yes there did.

Q. Would you tell us the first date when you became familiar with that name? A. I can't give you the exact date but it is my recollection it would have been in March of 1972.

Q. And how did it come about that you came to know Mr. Beckwith? A. I was assigned by my supervisor to an investigation referring to Alvin Beckwith.

Q. Do you know how that investigation was initiated? A. Yes sir, I do.

Q. How was that? A. It was based on information from a confidential source.

Q. Given to whom? [21] A. Given to our office.

Q. What information was that? A. The information to the best of my recollection was that Mr. Beckwith had failed to return all of his income on his federal income tax return.

Q. You are saying that a call came in to the IRS and that initiated an investigation by you, without more? A. I don't know whether it was a telephone call or just, you know, whether it was in person at this point in time.

Q. You were assigned to a case just on a tip, is that your testimony? A. Yes, sir, I would say that is right.

Q. And were you working with a revenue agent at that time? A. No sir, I was not.

Q. In March? A. No.

Q. Well how come this case took on criminal aspects based just on a tip from an informant? A. We have various ways of cases being, you know, coming into our jurisdiction. One of those ways is information from a confidential source making allegations against an individual.

Q. Well there is a difference, is there not, Agent Peterson, between a Special Agent, which you are, and a [22] Revenue Agent? A. Yes there is.

Q. Am I correct in that the Revenue Agent is basically to ascertain civil liability to the Internal Revenue Service or the government? A. That is correct, yes.

Q. And your function is criminal in nature? A. My function is to investigate the possibility of criminal violations of the Internal Revenue laws.

Q. And tell me more about this tip. What did this informant say? A. To the best of my recollection that was the sole extent of it.

Q. That he was not reporting certain income? A. That's right.

Q. And what makes that a criminal violation? A. Well it is a possible criminal violation if a person that is not reporting income on their tax returns, if it was taxable income.

Q. Well there is a difference, is there not, between civil and criminal tax liability. There is an element involved there– A. Well there is a difference between civil and criminal, yes.

Q. What I am trying to get at if you understand [23] my question, is this: what was it from the tip, if you know, that led your office at the outset to begin a criminal investigation rather than a civil determination as to the facts? A. Well, as far as the cases originating, there are different sources, as I said, but in general the division initiates an investigation without anyone from the audit division which is comprised of the revenue agents. Revenue agents may not get involved in the case for several months after it gets initiated until such time as we would request one.

Q. And when did a Revenue Agent first become involved in this case? A. I don't recall exactly but I would

say that it would have been some time after March 29 of 1972.

Q. Well could you give us the date? A. I don't have that information with me today.

MR. HOFFMAN: Your Honor, I will ask the government to produce that information.

THE COURT: What difference does it make?

MR. HOFFMAN: It makes a substantial amount of difference insuring that there has never been any civil intention at all in this case.

THE COURT: Well I believe the government will concede that. The agent said that they got a tip and they started right out with him.

[24] MR. HOFFMAN: Alright.

BY MR. HOFFMAN:

Q. Now, without going into the details, how long did you investigate Mr. Beckwith? A. Well, as I said, to the best of my recollection, the investigation was initiated, in other words, assigned to me, on or about March 29, 1972. Due to other cases that I was working on at that time I don't believe we–I began making any contacts, going to the various public records and those type of contacts, until possibly May, sometime in May, 1972.

Q. Now you said "we" before–were there any other agents being assigned with you on the case or were you the sole agent, was this your sole project, in other words? A. In may of 1972 I believe that there was–I am almost sure that there was a Revenue Agent assigned to work with me at that time. I was still the man in charge of it, to put it that way.

Q. Were there any other Special Agents working with you? A. No, I was the agent assigned, but there may have been an agent involved at one point in time but to my recollection there was not–I mean, as a witness.

Q. Well let me ask you this: between March and August did you have any conferences with Assistants of the United States Attorneys office concerning Mr. Beckwith? [25] A. To the best of my recollection, no.

Q. You had no conferences at all? A. To the best of my recollection, no.

Q. And is it your testimony that you were not dealing with any prosecutor or prosecuting attorney? A. No, that's right. I would say we did not get involved with any Assistant United States Attorneys until after the interview, the initial interview, but at some point in time later there were some instances of contact.

Q. Was that before the indictment? A. Oh yes, it was before the indictment.

Q. Is it fair to state, then, that you had done a considerable amount of investigation about Mr. Beckwith before you went to see him on August 1? A. Yes, we had, as I say, had quite a bit of information relative to his background and his family and that type of thing.

Q. And specific transactions of his? A. We had some, yes.

Q. And how was it that you went to his house. Did you call him for an appointment or— A. No, I did not.

Q. You just appeared, didn't you? A. Yes.

Q. With another agent? [26] A. Yes.

Q. At what time did you appear? A. I believe it was 8:00 o'clock.

Q. Why was it that you didn't call Mr. Beckwith first to arrange an appointment? A. Well sometimes we do it that way. There is no particular reason.

Q. Isn't it fair to say that you wanted to make sure that he would not consult an attorney before you went to see him—wouldn't that be one of the considerations that you had? A. No.

Q. And when you got to his house at 8:00 o'clock, was that in the morning? A. Yes sir.

Q. Is it your normal procedure. What time do you start work? A. I start work at approximately 7:30 in the morning.

Q. And you went out to his house at 8:00? A. I believe so, yes.

Q. How did you know he would be home? A. How did I know? I wasn't sure that he would be there.

Q. But you went? [27] A. But from prior investigation and information I had developed that Mr. Beckwith was the manager of a liquor store and my information indicated that the liquor store did not open until 10:00 o'clock, so I figured that this would be a good time to interview him, and I didn't want to go to the liquor store, not to have any possible embarrassment—we don't like to interview people in front of other people.

Q. So you went to his house at 8:00 in the morning? A. Yes sir.

Q. And you didn't call first? A. That's correct.

Q. Who answered the door? A. I can't recall specifically who had answered the door. It might have been a teenager in the house or it might have been a person known to me as Evelyn Wills. I just don't recall.

Q. You are not certain? A. I am not certain.

Q. Did you make any notes of this? A. No I didn't.

Q. Alright, what happened when you knocked on the door? A. I identified myself. I said I was Mr. Peterson of the Internal Revenue Service and I would like to talk to Mr. Beckwith.

[28] Q. You went with someone else, didn't you? A. Yes.

Q. Why did you go with another person? A. Well it is a policy of the Internal Revenue Service Intelligence

Division that when an agent is interviewing a taxpayer that a witness be present, another Special Agent.

Q. And when was it that you decided that you would interview Mr. Beckwith on August 2? A. When—at what point of time, do you mean?

Q. Yes, when did you decide that? A. To the best of my recollection it would have been probably within a few days prior to that time. To my recollection I was working on another case during the month of July and I just finished that case and had made the decision then.

Q. And you decided, I mean it wasn't a spur of the moment thing, that is what I am trying to get at? A. No, this is normal procedure when we are interviewing a taxpayer in any investigation and, as I said, I did come to the decision at that time to interview Mr. Beckwith.

Q. That would be on August 2, and you said that you made that decision a few days before hand? A. Well, I knew that I was going to interview him from the very beginning because, as I said, I had been working on other cases and I did make some contacts on the case, but I didn't make the decision to interview him until, as I said, [29] until August because I was working the whole month of July on another case and in fact most of June and July to my recollection.

Q. Now what happened when you identified yourself to the person who answered the door? A. Well that person, whoever that person was, we told them that we would like to talk to Mr. Beckwith about his taxes and they asked us to step in and I believe they showed us into the living room and they asked us to have a seat.

Q. Then what happened? A. I think very shortly after that Mr. Beckwith, to the best of my recollection, Mr. Beckwith came down the stairs, he had his pants on but I think he had a T-shirt on and I identified myself to him and said we would like to talk to him and he said—

Q. What do you mean when you say you identified yourself. Did you say "I am Gary Peterson?" A. With the Internal Revenue Service.

Q. With the Internal Revenue Service? A. Yes.

Q. And what did Mr. Beckwith say? A. He didn't say anything. He said "I would like to get finished dressing if you don't mind" and I said "fine" and he went on back upstairs.

Q. How long was he upstairs, a couple of minutes? [30] A. Oh, about five minutes or a little longer.

Q. And then he came back downstairs? A. And then he came back downstairs.

Q. And did you start a conversation with him? A. We went into the dining room and sat down at the table, Mr. Beckwith, myself and Mr. Fornili was there.

Q. Alright, what happened in the dining room? A. I am sorry?

Q. You told him that you were from the IRS and you went into the dining room? A. Okay. At that time I presented my credentials to him for his inspection. I said I was a Special Agent with the Intelligence Division of the Internal Revenue Service and I said that I had been assigned to investigate, to an investigation regarding his federal income tax liability for the years 1966 through 1971.

At that time, as we were required by the Internal Revenue regulations, I proceeded to—and this is prior to asking him any questions whatsoever—I advised him I was a Special Agent and that one of my functions as a Special Agent was to investigate the possibility of criminal tax fraud.

Q. You first told him you were investigating his federal tax liability? A. Well, I don't recall that—

Q. And then you said you were an Intelligence Agent [31] and then you went ahead and identified yourself

again as a Special Agent and that you were going to investigate his criminal tax liability, is that true? A. Well, I'd have to refer to the records to get the exact—

Q. Well did you take any notes of what you said? A. These notes were reduced.

Q. When, when you got back to the office you just copied down from recollection what you said, didn't you—what you told him—is that what you copied down? A. No, I am required to tell him, I carried with me a preprinted card of what I am required to tell him.

Q. Oh, do you have one of those cards with you? A. Yes.

Q. May I see one of them?

MR. HOFFMAN: Your Honor, may we have this marked as a defense exhibit for identification?

(Whereupon Defendant's Exhibit No. 1 was marked for identification)

MR. HOFFMAN: Do you want to see that?

MR. LEVINE: I am familiar with it.

BY MR. HOFFMAN:

Q. When you say he came in with you, Agent Peterson, and you are sitting down in the dining room you said you took out your credentials and showed him your credentials? [32] A. Yes.

Q. And then you read off of this card, did you, or did you pick it right off the top of your head, telling him what his rights were and who you were and so on. A. No, I read him the card regarding the functions of the Special Agent and I read from the card the advice of rights except for the first couple of words there.

Q. You read from the card the first time that you talked to him, is that right? A. Yes, it is my policy and it is IRS policy, before we go into any discussions whatsoever, to advise the person of the functions and to advise him of his rights as per our IR manual.

Q. Are you familiar with the memorandum of the interview that you wrote? A. Yes sir.

Q. How did you happen to leave that out—you said that you were talking to Mr. Beckwith and then later on there are indications that you read from the card with the advise of his rights but you didn't mention that in your memorandum. A. May I refer to my memorandum now?

Q. Do you have a copy? A. I have a copy here with me.

MR. LEVINE: I am not sure I understand the question.

MR. HOFFMAN: Well let me try to rephrase it.

[33] MR. LEVINE: If you would.

BY MR. HOFFMAN:

Q. At page no. 1 of your memorandum, you indicate the words "I told Beckwith" so and so and so and so and you make no indication that you had read from any card and then you go to page 3 and you specifically say "I had Beckwith read from the card which contained a statement of rights". A. Yes, that's correct.

Q. Well are you saying that the memorandum is wrong, then, that you didn't tell him or explain to him your function, or that you read from the card for him initially or what, which is correct? A. I advised him that, prior to asking him any questions, I advised him from the card. I picked up the card, the part that starts "under", that is where—

Q. Well was the memorandum of your interview correct then—you didn't mention anything about reading from the card?

MR. LEVINE: Objection, Your Honor. I think the Court should see a copy of the memorandum.

THE COURT: I have seen the memorandum. He has testified that he told him who he was and he just testified

he read him his rights and then later on he had him read his own rights and that's what the memorandum says.

BY MR. HOFFMAN:

Q. What happened after you say you read him what [34] is on that card, Defendant's Exhibit No. 1? A. We asked Mr. Beckwith, or I did, if he understood his constitutional rights and he acknowledged that he did.

Q. How did he acknowledge that he did? A. He said that he was aware of them and he knew that he didn't have to talk to us.

Q. And you didn't tell him that he didn't have to talk to you, did you? A. I did tell him exactly what I am required to say.

Q. You told him "I cannot compel you to answer questions"? A. Right, that's right.

Q. "That might incriminate you"—that is what you told him? Did you ever tell him that he had a right to remain silent and not to answer any questions? A. To my recollection, no, I did not.

Q. Did you tell him anything about the tax investigation? A. I told him that from the very beginning, after advising him of my functions, I told him that I was conducting an investigation regarding his federal income tax liability.

Q. Did you tell him anything about net worth, or about proving understatement of income, or cash expenditure theories or anything like that? [35] A. Not that I—

Q. Or was there any indication by you as to any of those matters or any indication by Mr. Beckwith to you that he had any knowledge of any of those matters of proving understatements of income or theories of that kind? A. Not to my recollection.

Q. In fact, Mr. Beckwith told you, did he not, Agent Peterson, somewhere along the line, about his education? A. Yes he did.

Q. Was that after you had already taken information from him or begun to interrogate him? A. That was after I advised him of his constitutional rights, as I was required to do.

Q. How long after it? A. Well I believe it is on page 3.

Q. How long did you interrogate him before you found out whether or not he could read or write? A. As I said, I don't know the time sequence of it, but the information as recorded in my memorandum prior to the section as to reading and writing is what was obtained at that particular time, primary information as to family, address, where he lived, this general type of questions that we ask.

Q. You could see the money he was paying for different things and you also asked him about that, didn't you? A. I may have on one or two occasions, I don't recall.

[36] Q. Well this is the first time and you wanted to find out whether or not he could even read and write, isn't that right? A. At that point in time that question came up.

Q. But it didn't immediately follow before you started to talk with him, that didn't follow? A. No.

Q. You initially advised him of his rights, and it didn't follow immediately after that? A. No, that's correct.

Q. So I take it you must have talked to him at least fifteen or twenty minutes—

MR. LEVINE: Objection, Your Honor. I wonder if Mr. Hoffman would just ask the questions rather than having Mr. Hoffman give the testimony.

THE COURT: Well I guess we could give him some leeway.

MR. LEVINE: No objection to substantial leeway, Your Honor, but he is giving the testimony.

THE COURT: Well, I know the Agent is testifying but the Agent has been asked to approximate as best he can how long he had talked with Mr. Beckwith and basically what information he had obtained from him before he knew about his intelligence level or, rather, before he knew whether or not Mr. Beckwith could read or write and I think that the Agent [37] ought to be able to give some estimate if he can.

MR. LEVINE: No objection to that question as you frame it, Your Honor.

THE COURT: Well that is what Mr. Hoffman was trying to find out from the Agent. The Agent has indicated that he could not give any specific time but the best he can do is relate to it what information is in his report which he got before he reached that stage in the report, isn't that right?

THE WITNESS: That's right, Your Honor.

THE COURT: Mr. Hoffman is asking him if he asked him about net worth and whatnot and what he bought and what he had and so on before he found out whether or not he could read or write.

THE WITNESS: Well to the best of my recollection in my experience I would say that it was approximately 15 to 20 or 30 minutes and maybe not that long.

BY MR. HOFFMAN:

Q. That is when you say you read the card to him again? A. No I didn't say that.

Q. Why did you read the card to him again? A. I did not read the card to him at that point in time.

Q. You say you did not read the card to him when he told you about his education? [38] A. No, I am sorry. I asked him to read the card to me to determine if he could read or write.

Q. Did he sign the card? A. No he did not.

Q. Did you ask him to sign the card? A. No I did not.

Q. Did you ask him to in any way indicate to you that he understood? A. Well at that point, I did not ask him if he understood what he was reading. I just asked him to read. I was trying to determine that he could read.

Q. Did you ask him to sign any waivers? A. I didn't ask him to sign any waivers.

Q. So that as far as your opinion is concerned, that was based on what he told you, he acknowledged he understood and that he read from the card? A. That's right.

Q. I see—I only have the first page of this report and I wonder if we could have the rest of it—

MR. LEVINE: Your Honor, I only have the original here.

THE COURT: You don't have a copy?

MR. LEVINE: Well let me give you my third page. I might advise Your Honor that I will be glad to get another copy for Your Honor if Agent Peterson has one.

[39] THE COURT: Would you.

(Whereupon Mr. Levine was temporarily excused from the courtroom)

THE COURT: We will take a short recess and you can get it through the recess, Mr. Hoffman.

(Whereupon a short recess was taken)

MR. LEVINE: Before we proceed I might advise Your Honor that I have given the whole copy to Mr. Hoffman as pretrial discovery and it has been turned over in its entirety to the defense.

THE COURT: Alright, why don't you mark this copy that I have and I will use it. Alright, you may proceed.

BY MR. HOFFMAN:

Q. Now Agent Peterson, what happened after Mr. Beckwith, as you testified, read the card that is marked as Defendant's Exhibit No. 1 for identification? A. We continued questioning.

Q. Well before that wasn't there some discussion about how much he knew about accounting and tax returns and that sort of thing? A. Yes.

Q. Well I want to know how all of this came about at that point? A. That is one of the questions we normally ask, that's correct. To my recollection we certainly asked that [40] when we had him read the statement.

Q. And he said that he had had no instruction in any of those areas, right? A. That's correct.

Q. Did you ascertain any other facts from him referring to his intelligence or knowledge of reading or writing or the matters that you were asking about with him? A. Not to my knowledge other than just what we said about how far he went in school.

Q. But you came away with the fact that he had gone through the tenth grade and that he could read from the card and he acknowledged to you that he understood it? A. He read the card. I did not say that he said he understood it. I don't recall that.

Q. You don't recall whether he said he understood? A. At the second time I just asked him to read the card to determine if he could read.

Q. And then you started to interrogate him some more, is that correct? A. I asked him some more questions.

Q. Right, well—did all of this take place in the dining room as well? A. Yes.

Q. Was there any break at all? A. Not to my knowledge, no.

[41]Q. You talked from approximately 8:00 until 11:00? A. That's correct.

Q. And referring, Agent Peterson, now to page 3 of your memorandum, you asked him about some expenses and automobile repair bills, is that correct? A. Yes sir.

Q. And he answered that he didn't know why his accountant didn't claim those as deductions on his return? A. I believe he did, yes he did—that's right.

Q. How did this come about, did he communicate to you that he knew that these were deductions or did you explain to him that those were deductions and those could be taken as deductions? A. I don't recall whether I explained it to him, you know, whether he could take them off.

Q. What I am trying to get at is how was he coming over to you, as to whether he knew about these tax matters or not, as to whether he had any knowledge, because you have an item in here, for example, gas and oil depreciation. Did he use the term "depreciation" or did you use the term "depreciation"? A. No, those are ours.

Q. And he was uncertain about that? Are you saying that you don't know how this came about, whether he could claim a deduction for his gasoline expenses, or oil? [42] A. No, I am not certain how it came about. I asked him if he used his car in connection with the business and he responded that he did.

Q. That he did? A. Yes.

Q. Well, how did the talk about deductions go as far as the tax returns—how did that come about? A. I probably said something that there is no indication, you know, that you are claiming them on the returns.

Q. Well you had examined the returns, had you not? A. Oh yes.

Q. And you didn't see any—

THE COURT: Now the Agent has told you it came about because he said that he used his car for his work.

THE WITNESS: Yes, well that—

THE COURT: That is what Mr. Hoffman wants to know. Is that true, is that how it came about? You are

talking about gas depreciation deduction on the car and that was because he said he used his car to make deliveries—did he tell you that?

THE WITNESS: Yes sir.

BY MR. HOFFMAN:

Q. And then you went on and started the next phase of your questioning directed at individual tax returns, as I take it from your memorandum, is that right? A. The next phase after talking about the car expenses?

[43] Q. Yes, then you started to get into individual tax returns for each year from '66 to '71? A. That's correct.

Q. Five different returns? A. Yes sir.

Q. With respect to his 1966 return he told you that he had won some money and you said "gambling", is that right? A. Yes, I believe so.

Q. And then there was a discussion according to your memorandum about whether or not gambling income was taxable or nontaxable? A. That's correct.

Q. How did this come about? A. Well, when he indicated that he had won some money gambling, I asked the next question would be "do you know that gambling income is taxable?"

Q. And what did he say? A. And to my recollection, I have to refer to the notes, that he indicated that he didn't know that he had to report it?

Q. Did or did not know? A. Did not.

Q. Did not, did you tell him that his loss or his winnings were only deductible, that his losses were only deductible, to the extent of his winnings? [44] A. I don't recall at this time.

Q. You didn't go into that? A. I didn't get into a general discussion about what was required, certainly.

Q. Then you went into—again in 1967 about some more gambling, and then in 1968 and '70, is that correct? A. That's correct, yes sir.

Q. How, after you went through each of these returns with him, what happened next? A. After I went through the returns I continued asking him some more questions but I would have to refer to—

Q. You want to refer to your notes? A. Yes, after I went into the returns then normally I go into asking questions about his bank account.

Q. And you say you do that normally, but how did you know that you did that? A. Oh, in this case?

Q. Yes, in this case. A. Well in this case I went into questions about what type of bank accounts he had.

Q. Did you ask him to produce any of the records of his bank accounts? A. I believe I did, yes sir.

Q. When was this? [45] A. I might not have asked him at that particular time but prior to the interview being concluded I believe I asked him if he would furnish us with his records.

Q. Did you ever tell him that he had the right not to produce any of his records to you? A. That's right, yes sir.

Q. When was that? A. This occurred at the liquor store after we left his house. He said, I think to my recollection, he said his records of some of his bank accounts were at the liquor store. We adjourned the meeting at his house and drove down to the liquor store where we met him a little while later and he came up with the books but before he gave me the books I advised him that he did not have to furnish those records to me.

Q. How did you advise him? A. Probably—I did not to my recollection, I did not read the full statement again, but I said something like "you are not required to furnish these records to us".

Q. That is the best of your recollection? A. Yes sir.

Q. Did you make any notes when you were there other than you report and memorandum here? A. I did have notes.

Q. Did you destroy those and are they available? A. To my recollection I believe they were destroyed.

[46] Q. They were destroyed? A. Yes sir.

Q. And they were reduced to this memorandum? A. Yes.

Q. They were reduced to this and then you destroyed them? A. Right.

Q. Now you talked with him about, what, three hours at his house? A. Yes sir.

Q. Did the other agent ask him any questions at the same time or did he just sit there taking notes of what you were doing and saying and what Mr. Beckwith was saying? A. Mr. Fornili asked questions from time to time, I believe, but I was doing most of the questioning.

Q. Was he taking notes? A. To my recollection I don't believe he was.

Q. How were you seated in the diningroom? A. If I can remember it was, I guess it was sort of rectangular, the table, and we were all, I was probably, I was at the end of the table and Mr. Fornili was to my right and then Mr. Beckwith was to his right.

Q. You say he may have asked a few questions but he didn't participate too much? A. No.

[47] Q. Was he making notes? A. Not to my recollection.

Q. He just sat there listening? A. Right, listening.

Q. And you were taking notes? A. Yes I was.

Q. And then you took him with you, did you—or before we get to that, did you talk with him about his car and his insurance, etcetera, on some of his personal property? A. That's correct.

Q. And then you adjourned to the liquor store? A. That's right.

Q. And at that time did you leave his house? A. It was about 11:00 o'clock.

Q. And it took you 45 minutes to get to the liquor store on Colorado Ave.? A. Approximately, we may have stopped to get a cup of coffee on the way down, I don't recall.

Q. Did you take him with you? A. No sir, we did not.

Q. Did you tell him to meet you down there? A. We asked him if he would.

Q. Go with you? A. No, we asked him if he would meet us.

Q. And then what happened—were you there before [48] or did he get there before you did? A. To my recollection we may have gotten there before him, I just don't recall. We may have gotten there and then he walked in shortly thereafter.

Q. You were waiting at the liquor store? A. We may have been, yes—we probably were inside, yes.

Q. You said before that you didn't want to interview him at the liquor store because it might embarrass him to have other people there, right? A. Right.

Q. But that did not affect you as far as going down there and getting the records? A. Well, no, right.

Q. How long did you stay at the liquor store? A. I don't recall offhand. I would have to refer to my notes. I guess we were there about 10 or 15 minutes at the most.

Q. And you say that you gave him a receipt and you left with the records and checks etcetera? A. Yes, right. I gave him a document receipt.

Q. And you told him how many times—you told him initially that this was a possible criminal violation, right? A. I told him that it—I told him that one of my functions was to investigate the possibility of criminal tax [49] fraud.

Q. One of your functions? A. Right.

Q. Did you tell him what your other functions were? A. No I didn't.

Q. And then did you tell him what your function was with respect to investigating criminal tax fraud? A. I told him I was investigating his income tax liability.

Q. His liability—but did you say his criminal liability or just liability? A. I said federal income tax liability.

Q. And that is the only thing—is it not true, Agent Peterson, that only one time did you mention a criminal violation and that is when you told him initially that one of your functions was to investigate the possibility of criminal violations? A. To my recollection you are correct, sir.

Q. And that was the only time—and the rest of the time that you were with him, the only words used are those on the card? A. That's correct.

Q. And you took the records from him at the liquor store but you didn't tell him that those records could be used in a criminal proceeding, did you?

* * *

[56]MR. HOFFMAN: May I have the Court's indulgence for one second, Your Honor.

(Whereupon there followed a discussion between counsel off the record)

MR. HOFFMAN: That's all I have, Your Honor.

CROSS EXAMINATION

BY MR. LEVINE:

Q. With the Court's pleasure, may I inquire briefly Your Honor—

THE COURT: Yes, you know you have the right to. You don't have to ask permission.

MR. LEVINE: Thank you, Your Honor.

BY MR. LEVINE:

Q. Mr. Peterson, can you tell us how the Washington Branch Office is organized?

MR. HOFFMAN: Your Honor, that is irrelevant.

THE COURT: I think it is irrelevant, too.

MR. LEVINE: Well, I wanted to inquire briefly, Your Honor, what I am trying to do is perhaps rebutt the inference of Mr. Hoffman that this is an unusual type of inquiry.

THE COURT: I will take judicial notice of the organization of the Washington Branch Office of the Internal Revenue Service on the date in question.

MR. LEVINE: Alright.

THE COURT: Is there any contest between the two of you [57] as to how it was organized?

MR. HOFFMAN: None by me.

THE COURT: I didn't think so.

MR. LEVINE: Very well, Your Honor.

BY MR. LEVINE:

Q. Agent Peterson, of the cases you get, being assigned to the Washington Branch Office in the Special enforcement Division, how many in percentage terms come from Revenue Agents?

MR. HOFFMAN: Your Honor, I think this is irrelevant, too.

THE COURT: No, you may answer that question.

THE WITNESS: The percentage would be, from Revenue Agents, did you say?

MR. LEVINE: Yes.

THE WITNESS: Let's see—over the last two years to my recollection the percentage was, would be one percent, two percent, if that many.

BY MR. LEVINE:

Q. Do most of the investigations in which you become involved commence with the Special Agent? A. Do you mean since I have been with the Internal Revenue Service?

Q. Since you have been in the Washington Branch of the Special Enforcement Division. [58] A. Since I have been involved with the Special Enforcement Division—what was it you asked in your question again?

Q. Do most of your cases commence or most of the cases which you investigate commence with the Special Agent? A. That's correct, that's right.

Q. And, Agent Peterson, directing your attention to August 2, 1972, the date of the interview with Mr. Beckwith, what was the purpose for having Agent Fornili with you? A. Well, the purpose was to have him as a witness to corroborate what the taxpayer said and also to corroborate anything that might occur at a later time as to allegations of misconduct of either the IRS or myself brought by the individual.

Q. Agent Peterson, speaking of that interview of August 1, 1972, when you first contacted Mr. Beckwith, that morning, did you tell him that you were investigating him for criminal tax liability? A. When I first saw him?

Q. Yes. A. I probably—I don't recall saying criminal tax liability when he first walked in the room, you know, prior to him coming back downstairs and us sitting down at the table.

Q. Well, let's put it in sequence. Suppose you tell me upon your first contact with him when you first [59] encountered him in his home— A. To the best of my recollection I told him that I was a Special Agent, Special Agent Peterson with the Internal Revenue Service Intelligence Division and that I wanted to ask him some questions regarding his income tax.

Q. What, if anything, did he say then? A. He said that he would like to go upstairs and put his clothes on and he would come back down and talk to us.

Q. And I trust that occurred? A. That's right.

Q. And when he appeared dressed in the living room of that home what, if anything, did you first tell him? A. At that time I believe we went into the dining room to sit down and, as I say, no questions being asked by me prior

to us sitting down, and then as soon as we sat down I presented my credentials that contained my commission and our badge which is attached to it, and I identified myself as Gary Peterson and Mr. Fornili identified himself, showed his credentials, and I read the statement regarding my functions as a Special Agent and then I proceeded to tell him of the years I was investigating and then I addressed, I told him I wanted to ask him some questions but before I did that I was required to read to him his rights.

Q. Alright, now, Agent Peterson, directing your attention to Defendant's Exhibit No. 2, I believe it is, [60] directing your attention to the rights that you actually read to him, anywhere in that recitation of his rights, does it include the terms "criminal proceeding", "information that might be used against you in criminal proceedings"?

MR. HOFFMAN: Your Honor, I don't see any reason for Mr. Levine leading the witness. It speaks for itself.

THE COURT: I think so. I can read.

MR. LEVINE: Very well. May we have it entered into evidence, then—Defendant's Exhibit No. 2?

THE COURT: It will be received.

(Whereupon Defendant's Exhibit No. 2 was received into evidence)

MR. LEVINE: May we also move into evidence, Your Honor, defendant's Exhibit No. 1 which is the card which also used the same term "criminal proceedings"?

THE COURT: Any objection?

MR. HOFFMAN: No Objection.

THE COURT: It will be received.

(Whereupon Defendant's Exhibit No. 1 was received into evidence)

BY MR. LEVINE:

Q. Mr. Peterson, when you spoke with Mr. Beckwith, was he coherent? A. Yes sir. He appeared to be.

Q. Did he appear to be under the influence of drugs [61] or alcohol? A. Didn't appear to be.

Q. Was he responsive to your questions? A. Yes sir.

Q. Was he well oriented as to time and place? A. Yes, he was in my opinion—it was a friendly type of conversation. I don't recall him becoming beligerent at any time or yelling or anything like that, or asking us to leave or anything.

Q. Was there anything about the inquiry or the initial portions of the interview wherein you advised him of his rights pursuant to the agent's manual and the card, that he indicated that there was something about it he didn't understand? A. No, no he did not.

Q. Did you ask him if he fully understood all of what you said? A. Yes I did.

Q. And what was his response to that? A. He stated that he understood what we read.

Q. During the course of the interview did you ever ask him if he had an attorney or an accountant? A. Yes sir, I did.

Q. What did he respond? A. He said that Mr. Hyman Taiche was his accountant and also handled some of his legal matters for him.

[62] Q. Well did he indicate that Hyman Taiche was an attorney, did he indicate that he believed him to be an attorney? A. I believe he indicated that Mr. Taiche was an attorney.

Q. Did he ever ask that Mr. Taiche be present during the course of the investigation? A. No, he did not.

Q. Alright, and referring to the moment in time soon after you commenced the interview wherein the defendant read from your card now in evidence as Defendant's

Exhibit No. 1, could you tell us how he read that card? A. He read it without any hesitation.

Q. Did he read it outloud, do you mean? A. Yes, he read it outloud. I asked him to read it outloud.

Q. And did he read it smoothly and without hesitation? A. Right.

Q. And after reading the card smoothly outloud, did he ask you any questions about it? A. No he did not.

Q. Did he ask you or give you any reason to believe that he didn't understand any part of that card? A. No, no.

[63] Q. Was there ever a time during the course of the interview, during the entire operation of it, that Mr. Beckwith asked to see an attorney? A. No.

Q. Was there ever a time during the course of the interview where he said he wanted to stop answering questions, that he didn't feel like answering any more or talking to you anymore? A. No.

Q. Did there ever come a time during the course of the interview that he said "I wish to exercise my right to remain silent"? A. No.

Q. After Mr. Beckwith had started talking with you, if he had asked you to leave with Mr. Fornili, would you, what would you have done? A. We would have left.

Q. Was there ever a time during the course of the interview that you put Mr. Beckwith into custody? A. No sir.

Q. Was there ever a time during the course of the interview that you led him to believe that he was not free to leave whenever he wanted to? A. No sir.

Q. Was there ever a time during the course of the [64] interview that he indicated to you that he was tired or fatigued in some way and wanted to rest and stop talking? A. No sir.

Q. Was there ever a time during the course of the interview that he indicated he was not in full accord with what you were doing, and that he did not want to respond or that he had some feeling about it? A. No sir.

MR. LEVINE: Your Honor, I have no further inquiry.

THE COURT: Alright, you may inquire.

REDIRECT EXAMINATION

BY MR. HOFFMAN:

Q. Now you said that this was a friendly type of conversation? A. Yes—well what I meant is we were not yelling at each other.

Q. And you say you came into the man's house and you told him you were going to investigate him for criminal tax violations? A. I said possible criminal tax violations.

Q. Possible criminal tax violations? A. Yes.

Q. And then you all sat down at the table and just sort of chatted together in a friendly like way? A. Well—

* * *

[66] A. I asked him if he was the owner.

Q. You just asked him "are you the owner?" just like that? A. "Are you the owner?"—right.

Q. And Mr. Levine just a second ago asked you about whether or not Mr. Beckwith at any time asked if Mr. Taiche who was identified as a sometimes attorney for the defendant, could be present and you said that he never asked for the attorney to be present, is that correct? A. Would you repeat that question?

Q. Special Agent Peterson, Mr. Levine asked you if Mr. Beckwith at any time had requested that his attorney be present during the course of the interview or inquiry and you said no? A. That's correct.

Q. Could you tell us when you ever told him that he had a right to have his attorney? A. Yes, I told him at the very beginning.

Q. At the point—tell me where? A. When I read him his rights.

Q. Show me where there is the reference in his rights—show me where it indicates that he is entitled to have his lawyer present?

THE COURT: "I advise you further that you may if you wish have the assistance of an attorney before responding"— [67] any other reference?

BY MR. HOFFMAN:

Q. Any other reference? A. None other than the fact that when he read the card he read the same statement.

Q. Did you ever tell him that he had the right to have an attorney in the room that morning during questioning? A. Those exact words?

Q. Yes. A. No sir.

Q. Mr. Levine also asked you if at any time during the inquiry did Mr. Beckwith say that he wanted to exercise his right to remain silent as he had it, and you said no? A. That's correct.

Q. Did you tell him at any time that he had the right to remain silent? A. To my recollection I didn't tell him those exact words.

Q. You never told him other than, the only thing that you told him was that you couldn't compel him to answer questions that might incriminate him? A. That's correct.

Q. And did you explain to him what type of answers would incriminate him? A. No I did not.

[68] Q. Didn't it become apparent during the interview, Agent Peterson, that he knew very little about tax law or tax deductions? A. Yes.

MR. HOFFMAN: That's right—that's all I have.

RECROSS EXAMINATION

BY MR. LEVINE:

Q. I just have one or two questions, Agent Peterson, at the time you interviewed Mr. Beckwith at his home, did you ever at that moment in time have any evidence which would indicate to you that Mr. Beckwith had in fact been involved in the commission of a crime?

MR. HOFFMAN: Oh, Your Honor, I object. We had stipulated—

THE COURT: No, it is within the focus of the investigation. You may answer that.

THE WITNESS: Would you repeat it please, sir.

BY MR. LEVINE:

Q. At any time on August 2, 1972 when you interviewed Mr. Beckwith at his home did you in fact have any information sufficient, perhaps for probable cause to believe that Mr. Beckwith in fact had committed an income tax crime?

MR. HOFFMAN: Oh, no, I object. That calls for a conclusion of the witness that only the court can determine and we have never gone into the investigation that he performed [69] from that point of view—that is what I requested and now Mr. Levine wants to extract from the witness just the opposite of what I was not permitted to bring out.

THE COURT: What's the relevance of the question. I don't see the relevance.

MR. LEVINE: Well, the reason I asked the question, Your Honor, if I may make a statement to the Court, is on the issue as to whether or not Mr. Beckwith was in custody. If he was in custody or detained, all the indicia that Miranda speaks of, wherein he is entitled to his warnings, become relevant—how far had we gone, as Mr. Hoffman says, was he free to leave, was he free to tell these people "gentlemen, I think you should leave". I

want to know if the Agent said, as he might have said, "No, Mr. Beckwith, you are not permitted to leave and nobody is going to leave including you—you are under arrest." Now, if so, he can say that, but if he thought—

THE COURT: He didn't say that. I don't know what he thought but he didn't say that.

MR. LEVINE: That's right.

THE COURT: Or he says he didn't say it.

MR. LEVINE: That's correct.

THE COURT: So I don't think it is relevant.

MR. LEVINE: I think the answer "yes or no" would be relevant and to the extent that you want to hear it, Your Honor, I would like him to answer it.

[70] THE COURT: Well, you mean you want the Agent to say whether or not at any time during the interview he was determined to arrest Mr. Beckwith?

MR. LEVINE: Or if he thought he had enough to arrest him for the commission of a crime or if he knew of the existence of a crime, and with that question we would be satisfied, Your Honor.

THE COURT: I will permit you—well I will ask the question myself: did you ever have any intent to detain him for any purpose?

THE WITNESS: No, Your Honor.

THE COURT: Were you going to take him down to the Internal Revenue Service for somebody else to interrogate him?

THE WITNESS: No sir.

THE COURT: And all the time that this thing was going on, for two or three hours, were there other people in the house?

THE WITNESS: Yes, there were at least one other person in the house, to my recollection.

THE COURT: Was this not a work day?

THE WITNESS: Yes it was.

THE COURT: Did he have to make any arrangements to open up the liquor store that morning?

THE WITNESS: Yes, that's right—he told Evelyn Wills that, to go on down, to my recollection he told Evelyn Wills to go on down to the store and open it up.

[71]THE COURT: He never told you that he had to go on down and open it up?

THE WITNESS: To my recollection, no.

THE COURT: Did you ever tell him that he couldn't go down and open up the store, that you were going to keep him there that morning?

THE WITNESS: No sir.

BY MR. LEVINE:

Q. If I may, who is Evelyn Wills? A. Evelyn Wills is a woman who is employed at the Colorado Liquor Store and, based on what she has told me, she has been a friend of Mr. Beckwith's for many years.

Q. Was she the one that was in the home that morning? A. She was there, yes sir.

MR. LEVINE: I have no further questions.

THE COURT: Do you want the testimony of the other agent, Agent Fornili?

MR. HOFFMAN: Yes, Your Honor, but I will make it much more short than this one.

THE COURT: You are going to make it much more short, Mr. Hoffman.

MR. HOFFMAN: I recognize that, Your Honor.

THE COURT: And the defendant, will he testify?

MR. HOFFMAN: I believe so, Your Honor.

* * *

[74] GARY ROGER PETERSON

was recalled as a witness and having been previously duly sworn was examined by counsel and testified as follows:

REDIRECT EXAMINATION (cont'd)

BY MR. HOFFMAN:

Q. Agent Peterson, I have just two or three more questions. Mr. Beckwith was arrested when, do you recall, on this indictment? A. I believe it was the 6th of the 10th, to be honest with you, I don't recall, but it was early June, the 6th or the 10th of June, and it was in the afternoon.

Q. Did you participate in that arrest? A. Yes I did.

Q. Where was the arrest made? A. The arrest was at the Colorado Liquors, 5514 Colorado Ave., N.W., Washington, D.C.

Q. Were any other law enforcement agents with you at the time of the arrest? A. Yes there were.

Q. What was their names? A. Special Agent E. Michael Fornili was with me, [75] from the Internal Revenue Service.

Q. And any others? A. No, there were two other individuals present.

Q. Were they from the IRS or elsewhere? A. They were from another agency.

Q. Which one? A. At that time it was called the Bureau of Narcotics and Dangerous Drugs.

Q. Would that be Agent Swift, would he be one of them? A. Yes, right.

Q. Can you tell me when or how it was arranged that they would participate in an arrest on a tax evasion case? A. Yes, there were some allegations during the investigation that Mr. Beckwith may be involved in drug activities, narcotics activities.

Q. And who authorized agents from the BNDD to go along with you? A. The Internal Revenue Service allowed them to come along.

Q. This was not done at the direction of the United States Attorney or in consultation with the U. S. Attorney? A. In consultation with, right–

Q. What assistant was that? A. Assistant United States Attorney William Hardy.

Q. The last question I have is this–when was it [76] that you started to consult with the U. S. Attorney about Mr. Beckwith, Mr. Hardy or anyone else? A. It would have been at the time, well, there was a time in August of 1972 where we consulted with an Assistant, I don't recall which one it was, regarding a witness that we wanted to obtain a Grand Jury subpoena for and that would have probably been the first time that we had any contact with or deal with the U. S. Attorney, Assistant U. S. Attorney.

Q. So it is your testimony that you made the original contact with the prosecutor's office, and it was not vice versa, that they first contacted you, with respect to Mr. Beckwith? A. That's correct.

Q. And that occurred sometime in August, is that correct? A. That's correct.

(Whereupon the witness was excused)

Whereupon

E. MICHAEL FORNILI

was called as a witness for the government and after having been first duly sworn was examined by counsel and testified as follows:

DIRECT EXAMINATION

BY MR. HOFFMAN:

Q. Agent Fornili, would you state your full name for the record, please? [77] A. My name is Earnest Michael Fornili.

Q. and how are you presently employed? A. I am presently employed as a Special Agent for the IRS Intelligence Division in Washington, D. C.

Q. How long have you been a Special Agent with the Internal Revenue Service? A. I have been a Special Agent for approximately two years.

Q. For two years? A. Yes sir.

Q. Directing your attention to August of 1972, were you then in the same employment? A. Yes I was.

Q. When did you first become familiar with the defendant in this case, Mr. Beckwith? A. Well the first time that I saw him or met Mr. Beckwith was the day we went out and interviewed him at his home out in Silver Spring.

Q. How did you get involved in this? A. Well, Special Agent Peterson requested that I go with him on the interview of Mr. Beckwith.

Q. When was it that he requested you go with him? A. I really can't recall the specific date–probably, maybe a day or two prior to the day we went. He said, you know, "are you free, can you go with me?" and I said "sure, whenever [78] you want to go I will go with you."

Q. So you decided you would go on the Wednesday? A. Well this was the day that Special Agent Peterson decided that we should and so we did.

Q. Was there any conversation about getting in touch with Mr. Beckwith before you went out there? A. Not that I recall, no sir.

Q. Did you meet at his house? A. Meet?

Q. Or did he come to your office? A. Oh no, Special Agent Peterson and I met at a shopping center about, I guess, the middle from Mr. Beckwith's house because I live on one particular side of town and Gary lives on another, so it would be more convenient to meet there rather than to go to the office first and then go on out there.

Q. So you did not go to the office first? A. No sir.

Q. Alright, could you tell us what was said when you first met Mr. Beckwith that morning and who said what if you can recall? A. Well, we exchanged like social amenities and then we both proceeded to identify ourselves as Special Agents with the Internal Revenue Service who wanted to discuss some tax matters with him.

Q. You shook hands with him, too, didn't you, when [79] you introduced yourself? A. Yes I think so—that would be normal.

Q. What would you term the atmosphere, as a relatively friendly one? A. Yes sir, I would say it was.

Q. Did you feel any hostility at all? A. No sir, not when we talked to him, no.

Q. And what was done, if anything, or did you see Agent Peterson do in advertising Mr. Beckwith of his rights? A. Well, Gary, Special Agent Peterson, is the one who had the responsibility of, you know, introducing ourselves, and we met him in the living room and then he said "you would probably be more comfortable if you go into the dining room" and then we proceeded and then we sat down and we identified ourselves as Special Agents with the Internal Revenue Service by taking out our credentials and presenting them to Mr. Beckwith for his inspection.

Now I don't recall specifically the way, what we did, to actually bring the credentials out and place them right in front of him, but we do do that, place them right in front of the individual's face, so that if he wants to inspect them he can, and whether he actually picked them up and held them in his hand I don't know, but at least he was aware that we were Special Agents and we also told him of that fact, Special Agents for the Internal Revenue Service Intelligence Division.

[80] Q. Well, do you explain anything further about the Intelligence Division or what that is? A. Well, I myself didn't, no sir, but Special Agent—

Q. Well was told to him that day? A. Well that day, Special Agent Peterson said he wanted to discuss some of his tax matters for the years involved and then he took out and read from the card and just very briefly and I am sure the card has been seen here but, it says briefly that we are going to ask questions about "your tax liabilities" and then explains the function of a Special Agent and the fact that we do contact possible violations of IRS laws, criminal violations of IRS laws, and then goes into a statement of his constitutional rights, and that he doesn't have to speak to us or answer any questions, and he doesn't have to submit information or documents or answer any questions and he has a right to an attorney if he wants if and, you know—

Q. You read from the card then, is that what you are saying, whatever is on that card? A. I did not read it. I said Peterson read it from his card, yes sir.

Q. But anyway, the telling of Mr. Beckwith of his rights was from the reading of the card? A. Yes sir.

Q. He didn't tell him or just speak off the top of his head, so to speak? [81] A. No sir, he purposely brought out the card and read from the card.

Q. Alright, and then what happened? A. After he read him his rights, and Mr. Beckwith acknowledged that he understood it, Gary—

Q. How did he indicate that he understood it? A. Well he, I believe Gary, when he read his rights to him, said "do you understand your rights that I read to you?" and I think he said I am not sure whether he said "yes" but I am pretty sure that he did.

Q. You are pretty sure? A. Well, you know, it is hard to recall whether he, you know, nodded his head, but I believe he did say "yes" he understood it.

Q. If he said—well no, never mind, strike that. How long did you talk with him approximately? A. I would say it was about three hours.

Q. And were you at all time sitting in the dining room? A. Yes sir.

Q. And did you ask any questions yourself, do you recall any specific questions that you may have asked? A. Well, I mean, maybe it was something—

THE COURT: No, just "yes sir" or "no sir", or "I don't know." * * *

* * *

[86] Whereupon

ALVIN AUGUSTUS BECKWITH

was called as a witness in his own behalf and after having been first duly sworn was examined by counsel and testified as follows:

DIRECT EXAMINATION

BY MR. HOFFMAN:

Q. Sir, would you state your full name for the record, please? A. Alvin Augustus Beckwith.

Q. Mr. Beckwith, what is your present address where you reside? A. 1818 Q Street, S.E., Washington, D.C.

Q. How long have you resided at that address? A. Going on nine years.

Q. Now how old are you, Mr. Beckwith? A. Forty-four.

Q. Could you tell the court the extent of your education? A. I graduated from Junior High School in 1945 and proceeded to go to Administration in which I spent one year and dropped out of school to work.

Q. What was the highest grade that you obtained the highest grade level? [87] A. Ninth.

Q. In the course of your schooling did you ever have any contact with tax courses or accounting courses? A. No sir.

Q. Have you ever had any instruction in any of those areas at all? A. No sir.

Q. Mr. Beckwith, when you came to be interviewed by Agent Peterson which we have been talking about here, he showed you a number of tax returns, about four or five in total? A. Yes sir?

Q. Am I correct? A. Yes sir.

Q. In respect to any of those tax returns, had you prepared any of those yourself? A. No I didn't.

Q. Did you ever prepare and file a tax return yourself? A. No I haven't.

Q. Do you know how? A. No I don't.

Q. Now, Mr. Beckwith, have you before this case, had you ever been arrested before? A. Yes sir.

Q. When, and do you know the jurisdiction. First, [88] do you recall the dates or the years? A. I believe so, 1963.

Q. Was that in Washington? A. Washington, D.C.

Q. And how many other arrests have you had and what were they for? A. Three or four.

Q. In any of the prior arrests before this case, had you ever been told of your rights, what your rights were, by a law enforcement officer? A. No sir.

Q. Mr. Beckwith, I call your attention to August 2, 1972, do you recall that date? A. Yes sir.

Q. Where were you in the morning hours of that day? A. I was on Kemp Mill Road, Silver Spring, you know—

Q. What is that place, is that your home or was it? A. It is the home of Mrs. Wills and her family.

Q. Did you live there or had you ever lived there? A. No I didn't.

Q. Did you live there sometimes? A. I stayed there occasionally.

Q. Did you see agent Peterson there that day? A. Yes sir.

Q. Alright, what time was that when you saw him? [89] A. It was in the morning, I don't recall the hour, but it was in the early morning.

Q. Tell His Honor in your own words what happened when you first met Agent Peterson in this house? A. Mrs. Wills opened the door, answered the door, and she came up and said that there was some revenue agents downstairs that wanted to see me and I said "okay" so I immediately went downstairs and I was fully dressed and they showed me the card with the identification on it, at least Mr. Peterson did, and I acknowledged, you know, that they were revenue agents or revenue men or whatever you want to call it and they were sitting in the den and they asked me was there some other place where I could take them where they could spread their books out and whatnot and I said "yes, come into the dining room" and that is where we proceeded to.

Q. What did they tell you what their purpose in being in your house and, if you can relate it to a specific agent, either Agent Peterson or the other agent— A. Mr. Peterson said that he was there to ask me some questions about my tax liabilities.

Q. And what did you understand that to mean? A. Well I just thought it was something he wanted to find out about my taxes, I didn't know.

Q. What else did he tell you after that and where did you go? [90] A. Well we went into the dining room and we sat at the table there and Mr. Peterson was at the one far end of the table and Mr. Fornili was at his rights side and I was on Mr. Fornili's right side.

Q. Now you said Mr. Peterson read to you from a card, is that true, as he testified? A. Yes sir.

Q. And have you seen a copy of that card? A. No I haven't sir.

Q. Well how did this come up that he read from that card and when did it occur? A. Well it occurred at the time, at the beginning of the interview, he started reading from the card at the height of it.

Q. Alright, and then what happened? A. An then he asked me did I understand what the card meant and so on.

Q. And what did you tell him? A. I said "I understood the card, yes, I understood."

Q. And did you understand it? A. I understood what the, what the, that he was reading from the card, but I didn't understand the necessities of the card—no.

Q. After he had read from the card and told you who he was did your opinion change at all as to why he was at [91] the residence of Mrs. Wills? A. No, I didn't have an opinion. All I knew, all I understood was that he wanted to ask some questions about my taxes.

Q. At that time did you know what a Special Agent was? A. No sir.

Q. Do you know what it is now, a revenue agent or Special Agent? A. No sir, I thought they were all the same.

Q. At this home, then, in the conversation if he had told you he was a member of the Intelligence Division, would that mean anything to you? A. No sir.

Q. And you talked with them about three hours, is that right, as they testified? A. Yes.

Q. And I would ask you to explain to the Court what was the general tenor or atmosphere of the interview and the discussion that occurred. A. Could you "phrase" that?

Q. Alright, I will try. What was the atmosphere of the discussion between you and the agents—I mean, when they made their inquiry from you, were they polite and courteous or what did you think? [92] A. Oh yes, in

fact, when we first, when they first identified themselves, they shook hands and they were smiling, and I was smiling, and during the course of the interview they were cracking jokes and they was laughing and whatnot.

Q. Let me ask you this: are you familiar or were you ever familiar at that time with any of these theories about net worth or cash expenditure theories in determining liability? A. I know nothing about it.

Q. Did you feel after the interview had occurred that you had said anything to incriminate yourself? A. No I didn't.

Q. Or that you were saying anything that would incriminate you? A. No sir.

MR. HOFFMAN: Nothing further.

CROSS EXAMINATION

BY MR. LEVINE:

Q. With the Court's permission: Mr. Beckwith, you have testified on direct examination that you had never yourself ever prepared in your hands, in your pen, any of your tax returns, is that correct? A. Right, sir.

Q. Now, in all the tax returns that you have filed, did you sign them? [93] A. No sir.

Q. You never filed any of your tax returns? A. You said all of them. I never signed all the tax returns I filed, no.

Q. Have you filed tax returns to which you did not append your signature? A. My signature was put on—my wife would sign my signature on some of them. If I didn't sign my wife would sign my signature.

Q. Well, regarding the ones, Mr. Beckwith, that you did sign. Did you read that portion of the tax return immediately above the place where you place your signature that any inaccuracy or any fraud, if you will, and I am not quoting the language specifically, but that there are criminal ramifications for falsifying any re-

ports—did you know that when you signed each of these returns? A. No sir.

Q. And, Mr. Beckwith, did you ever review any of the returns that you filed? A. No sir. Mr. Taiche prepared these returns and I was always under the impression that he was filing them right so I signed them.

Q. You never asked about it? A. No I just signed them.

Q. You never inquired about it? [94] A. No sir.

Q. You just signed a blank piece of paper? A. No it wasn't blank.

Q. But you signed it without reading what was on it? A. Right, because he is an accountant and I figured he knew what he was doing.

Q. And you never inquired about any of them? A. No sir.

Q. You trusted your accountant who was also a lawyer and you knew him to be a lawyer? A. Yes.

Q. And when you spoke with Mr. Taiche or one of his representative—I trust you did speak with Mr. Taiche or one of his representatives in helping with the preparation of your tax returns, did you not? A. I spoke to Mr. Taiche, yes.

Q. And you told him your sources of income, right? A. Yes.

Q. And he asked you about your sources of income? A. Er, I told him about my source of income in 1972, my 1972 taxes, not my 1970 or 1971 taxes.

Q. Well how did Mr. Taiche or one of his representatives ever learn about what your sources of income were for the tax returns that they prepared for you? A. Well he had the records to see where my sources [95] income came from.

Q. And you presented those to him? A. Yearly, with, you know, deductions—

Q. Yearly? A. Yes.

Q. And did you disclose all of your sources of income to him?

MR. HOFFMAN: Objection as irrelevant, Your Honor.

MR. LEVINE: No, Your Honor, when a man says that he doesn't know anything about filling out an income tax return he still should know that he ought to disclose his sources of income.

THE COURT: Well what relevance is that to this motion to suppress evidence?

MR. LEVINE: Well, he is suggesting to Your Honor that he has absolutely no idea—

THE COURT: I know what he is suggesting. I know what he is suggesting. If you want to go on, well, do you want to go through how he got together with Mr. Taiche for the preparation of his income tax returns? Did you go to Mr. Taiche's office, incidentally?

THE WITNESS: Yes sir.

THE COURT: And when you went to him did you take your personal records or papers and books of any kind?

THE WITNESS: I didn't have no personal records.

[96] THE COURT: Well, when you went to see Mr. Taiche, didn't he ask you questions?

THE WITNESS: Yes sir.

THE COURT: And you answered the questions that he asked you because he had to fill out certain papers and he needed that information to fill them out, isn't that correct?

THE WITNESS: Yes.

THE COURT: And when he got that from you he used it to fill out the forms that you signed, isn't that right?

THE WITNESS: Yes sir.

THE COURT: And you signed it and sent it in, right?

THE WITNESS: Right.

THE COURT: Well, that's all there is to it—that went on up to 1972, right?

THE WITNESS: Yes.

THE COURT: Alright.

BY MR. LEVINE:

Q. Did you know that you were supposed to tell Mr. Taiche all your sources of income? A. No I didn't.

Q. Well what did you think you were supposed to tell Mr. Taiche? A. Well I didn't—first of all, I didn't understand what you meant by that, when you say "all my sources of income".

THE COURT: Well, why did you bother to go to Mr. Taiche at all?

[97] THE WITNESS: He handles this store, you see.

THE COURT: But why did you go. He might have looked after the store—

THE WITNESS: Well he is a tax preparer and he had all my records.

THE COURT: So you knew that you had to file personal income tax returns, didn't you, because that didn't have anything to do with the store, that tax return?

THE WITNESS: Right.

THE COURT: Is that right?

THE WITNESS: Right.

THE COURT: And you knew that you would have to pay something, at least file a return anyway?

THE WITNESS: Yes sir.

THE COURT: Return on what?

THE WITNESS: On my income for that particular year.

THE COURT: What part of your income?

THE WITNESS: What part of my income?

THE COURT: Yes.

THE WITNESS: The income from the store.

THE COURT: Just the income from the store?

THE WITNESS: Yes sir.

THE COURT: And Taiche never asked you whether you had any other income, is that what you are saying?

THE WITNESS: Yes sir.

[98] THE COURT: He never asked you what property you owned or whether you were getting rental income or whether you had any bank accounts on which you were getting interest?

THE WITNESS: No sir.

THE COURT: He never asked you anything of that?

THE WITNESS: No sir.

THE COURT: Well, then, how long did it take you to fill out your returns—about fifteen minutes?

THE WITNESS: That's about it, sir.

THE COURT: Just about fifteen minutes—you would walk in and be there fifteen minutes and pay $5 and you were gone, is that right?

THE WITNESS: Well he had all of the records already, so you know, he would—

THE COURT: All of what records, you said you didn't have any records?

THE WITNESS: No, from the, from the—checks, cancelled checks, they were all of them in the office. I didn't have any. He had all the information that was necessary to have for preparing my income tax returns.

THE COURT: Did you tell Taiche and Taiche prepared your income tax solely on the basis of what you were getting from the store, is that right?

THE WITNESS: Yes sir.

THE COURT: And what you got elsewhere was nobody's business, right?

[99] THE WITNESS: I didn't get anything elsewhere.

THE COURT: The only source of income you had for filling out the tax returns was from the store?

THE WITNESS: Yes sir.

THE COURT: And that is what you told Mr. Taiche and that is the way the income tax returns were filled out, is that right?

THE WITNESS: Yes sir.

THE COURT: $500 a month times the number of months and that was all?

THE WITNESS: Yes sir.

THE COURT: Alright, well that's what he did.

BY MR. LEVINE:

Q. Did Mr. Taiche ever ask you if you ever went to horse races? A. No he didn't.

Q. Did Mr. Taiche ever ask you if you ever had any savings account? A. No.

Q. Did Mr. Taiche ever ask you if you had any activities in stocks and bonds? A. Well I invested $3,000 in the, the stock that I got from the store, a bonus from the store, I invested $3,000 of that into stock.

Q. And did Mr. Taiche ever ask you if you ever [100] received any dividends on that stock? A. Well he knew because he handled it himself.

Q. He didn't ask you about that? A. No.

Q. Did he ever ask you if you had any other stocks or bonds or investments? A. Not that I know, not that I recall.

Q. And for how many years did Mr. Taiche prepare your income tax returns? A. From 1970 on to the present day.

Q. From 1970 on but not prior to that? A. No sir.

Q. Who prepared your income tax returns in 1966? A. No one.

Q. Who prepared them in 1967? A. No one.

Q. Who prepared them in 1968? A. No one.

Q. '69? A. No one.

Q. Did you file any income tax returns during that period? A. No I didn't.

Q., No income tax in any of those years? A. No sir. I was unemployed at the time.

[101]MR. LEVINE: Could I have the Court's indulgence, Your Honor.

BY MR. LEVINE:

Q. Mr. Beckwith, were you married during the years 1966, 1967, 1968 and 1969? A. I have been married since August 13, 1950.

Q. And did your wife file any returns during the years 1966, 1967, 1968 and 1969? A. Yes sir.

Q. Were you named as a taxpayer on those returns? A. I don't know.

Q. You don't know if you were filing a joint return in those years? A. I don't know if joint returns were filed or not.

Q. Well, who filed your wife's tax returns for those years? A. I don't have any idea.

Q. Do you know if you signed those returns? A. Not to my knowledge, I didn't.

Q. You don't remember or are you saying you did not? A. To my recollection I would say I didn't sign any of them.

THE COURT: Well, did you ever authorize her to sign your name or did she ever tell you on the telephone that she was filing a joint return?

THE WITNESS: Yes sir.

[102]THE COURT: You knew that a joint return for husband and wife was being filed—did you know if your name was on it?

THE WITNESS: Yes sir.

THE COURT: Yes, did she get refunds at any time?

THE WITNESS: If she did I never knew anything about it.

THE COURT: No, but it was alright with you if a refund check was signed by her, wasn't it?

THE WITNESS: Yes sir.

THE COURT: So in fact during the years prior to 1970 she did have your authority to sign your name to a joint tax return, did she not?

THE WITNESS: If she told me I probably told her it was all right, yes.

THE COURT: Well, it didn't make any difference to you, then, did it?

THE WITNESS: Well what does income tax return mean? I mean what is—

THE COURT: What does a joint income tax return mean, what does joint mean? Is that what you are asking—what does the word "joint" mean?

THE WITNESS: Yes.

THE COURT: Aside from "hangout" in colloquial terms—what else does "joint" mean?

THE WITNESS: Well, I don't know.

THE COURT: Well, just in ordinary language, if I say [103] something is joint, what does it mean to you?

THE WITNESS: It means something together.

THE COURT: That's as good as anything.

THE WITNESS: Yes.

MR. LEVINE: I think so, yes,. Your Honor.

BY MR. LEVINE:

Q. Does joint income tax return mean filing one together to you? A. Yes as far as I knew.

Q. Sure—

THE COURT: Are you saying that before 1970 you never filed a tax return?

THE WITNESS: No, I filed a tax return but she worked for Pope Hardware, whatever year that was, and Mr. Taiche has that information.

THE COURT:

Q. So there was a return?

THE WITNESS: Yes sir.

THE COURT: What kind of return did you file then?

THE WITNESS: I believe it was a separate return.

THE COURT: Oh, you think it was separate?

THE WITNESS: In fact I am sure it was a separate return.

THE COURT: Why did you file a separate return, do you know?

[104]THE WITNESS: Well my wife and I wasn't together any more at that particular time.

the court; All right.

BY MR. LEVINE:

Q. Mr. Beckwith, during the course of your marriage to your wife, did there not come times where it became, or where it was in your interest to on some occasions file a joint return and on other occasions to file a separate return? A. Would you say that again, sir?

Q. Yes, during the time you were married to your wife, there were some years that it was to your advantage to file a joint return and other years where it was to your advantage to file a separate return, right? A. I don't understand whether it was to my advantage in any years to file any kind of return. I didn't understand that advantage part of it—it wasn't to my advantage to file one.

Q. Well, let me ask you this, Mr. Beckwith: on what basis did you determine that some years you would file a separate return and on some years you would file a joint return? A. The years 1970—Mr. Taische suggested that it would be a joint return so I didn't see anything against it, when you accountant or lawyer suggests—

Q. Were there ever any years prior to 1970 that [105] you filed a joint return? A. She probably, she filed a joint return but I don't know if it was any advantage or not.

Q. No, wait a minute, sir—when you say she filed it, as you define the word "joint", I trust you understand that there was testimony here that you both filed a joint return— A. Mrs. Beckwith filed a return and signed my name to it, yes sir.

Q. Is that correct? A. Yes sir.

THE COURT: Now just a minute. In connection with the circumstances surrounding this situation, see if I am right, Mr. Beckwith—when you and your wife were living together and getting along you filed joint returns, didn't you?

THE WITNESS: Some of the years, yes sir.

THE COURT: Well, now, when you say some of the years, what made the difference as to whether you would file a separate or a joint return some of the years that you and she were still getting along?

THE WITNESS. I don't know, sir, that is what I am getting at.

THE COURT: Well, who would file it—who would make that decision to file a joint return?

[106] THE WITNESS: She would.

THE COURT: She would?

THE WITNESS: And I just went along with her.

THE COURT: Whatever she said?

THE WITNESS: Right, sir.

THE COURT: And then there came a time when you were not getting along with her and you don't know what she did, is that right?

THE WITNESS: Right, I believe so.

THE COURT: And you did whatever—well you didn't do anything because in some years you didn't work?

THE WITNESS: Right.

THE COURT: Is that right?

THE WITNESS: Right.

THE COURT: And then there was also a time even though you didn't work when she did file a joint return with your knowledge and permission, is that right, because you were speaking to her then?

THE WITNESS: Right.

THE COURT: And then there was another time after you got Mr. Taiche, when Mr. Taiche suggested as your accountant and your lawyer that it was to your advantage, and you took his advice and you filed a joint return?

THE WITNESS: Yes sir.

THE COURT: All right.

[107] BY MR. LEVINE:

Q. Mr. Beckwith, was there any time during the interview of August 2, 1972 that you determined in your own mind that having a lawyer present might be beneficial or to your interest? A. No, I didn't.

Q. Mr. Beckwith, you were engaged in discussion about your Federal income tax returns with two members of the Internal Revenue Service over a period of approximately three years, I believe your testimony was, and you have told His Honor this afternoon that you knew virtually nothing about income tax. Weren't there any questions that were being asked that you thought it might be a good idea to have a lawyer or did you feel in your judgment that you were able to respond? A. I didn't see anything to have a lawyer for. I didn't—

Q. Were you able to respond to the questions that were being asked of you about your tax returns? A. I was answering the questions they asked me.

Q. Did you have any trouble in responding to the questions? A. Not to the point where it would be incriminal, no.

Q. Well I don.t believe you've answered the question. [108] Did you have any difficulty understanding that

question? Their english, or anything—their language was understandable, was it not? A. Sure.

Q. The language they used was coherent? A. Well what does coherent mean?

Q. It was logical and you understood the flow of what they said? A. Yes.

Q. You understood the meaning of what they asked? A. I understood what they were asking but I don't know what their meaning was.

Q. Not just a minute, did they ask you "do you own a home?" and did you understand that question? A. Yes sir.

Q. You were able to give an answer? A. Yes sir.

Q. And the other questions that they asked you, did it trouble you or were you able to answer them? A. Not all of them, sir.

Q. Well, did you endeavor to answer them as best you could? A. Yes sir.

Q. Did you choose not to answer any questions? A. Yes sir.

[109] Q. Did they press you on those questions that you couldn't answer? A. No, they didn't press me on anything.

Q. Anything you decided you didn't want to answer or couldn't answer was just left in that manner, is that correct? A. Er, the questions that they—some of the questions in that statement, it was their words, it wasn't mine.

Q. No, I am not referring to any statement now, Mr. Beckwith. I am asking you whether in the course of your interview they pressed you to answer any questions that you didn't want to answer? A. There was only a couple of questions I didn't want to answer, I couldn't answer.

Q. And you just did not answer them? A. That's right.

Q. And did they press you to answer them? A. No, they didn't.

Q. Was there ever a time during the course of the interview, Mr. Beckwith, that you sought to have or thought to yourself "well, gentlemen, I think we ought to terminate this—I think they ought to stop", until the meeting was over—and you were on your way? A. No sir.

[110] Q. Was there ever a time during that interview that you became fatigued or wanted to have a break or maybe a rest or have a cup of coffee? A. No sir.

Q. Now, Mr. Beckwith, after that interview or even during that interview, did there come a time where you made notes as to what happened during that interview? A. No sir.

Q. So the testimony that you are giving here today is the best of your recollection of the events which occurred over a year ago? A. Yes sir.

Q. There was no document that you have that might ever jog your memory in regard to what happened at that time? A. No sir.

Q. Now, do you recall, Mr. Beckwith, during the course of that interview specifically at the very beginning of that interview that Mr. Peterson advised you in the presence of Mr. Fornili, that there were criminal ramifications to this inquiry that they were focusing on?

MR. HOFFMAN: Objection, Your Honor. There has been no foundation for that question.

MR. LEVINE: Your Honor, I will rephrase it.

BY MR. LEVINE:

Q. Do you recall at the very beginning of the [111] interview that Agent Peterson advised you that one of his functions was to investigate the possibility of criminal violations of the Internal Revenue laws, do you recall that? A. Yes sir.

Q. Do you remember his specific reference to criminal violations? A. Well, not specific reference, I recall him reading me the card.

Q. Well, do you recall the reference to criminal violations? A. Well, I just didn't pin it down in my mind. I just—

Q. You heard it? A. I just thought that these guys were some people here that wanted to find out something about my taxes—

THE COURT: You don't talk to everybody in the world about your personal business, do you?

THE WITNESS: No sir.

THE COURT: And they came there and told you that they were Internal Revenue agents, is that correct?

THE WITNESS: Yes sir, sure.

THE COURT: And you were satisfied from what they showed you?

THE WITNESS: Yes sir.

THE COURT: It looked official to you?

[112] THE WITNESS: Yes sir.

THE COURT: And they wanted to ask you some questions?

THE WITNESS: Yes sir.

BY MR. LEVINE:

Q. And you do remember, don't you, Mr. Beckwith, that they made specific reference to criminal violations?

MR. HOFFMAN: Objection, Your Honor—he is asking as to criminal violations and he has already testified what they told him. He already said they didn't make any specific reference.

MR. LEVINE: I quite agree with the Court that Mr. Hoffman should be allowed a certain amount of latitude on direct examination but surely equal latitude should be given to us on cross examination.

THE COURT: His testimony was that he has no specific recollection as to reference to "criminal". He did not say that they did not make reference to it.

MR. LEVINE: Very well.

BY MR. LEVINE:

Q. Now, you do agree, Mr. Beckwith, that this document which has been marked as Defendant's Exhibit No. 1, marked by your lawyer, was in fact the card from which Mr. Peterson read at the beginning of the interview? A. He read from a card.

* * *

[121] to call the U. S. Attorney, Hardy, so that he can tell you how it happened, that there was a release about harrassment, or that it was in fact harrassment. Is that what you are asking?

MR. HOFFMAN: It appears to raise a question of credibility, Your Honor, and I would accept, if Mr. Levine has any information on how this got published in the newspapers, or whatever explanation he has, I would accept it.

THE GOURT: Now it might well, it might involve this in a very indirect way, but I don't have to go that far in order to judge the credibility of the witnesses.

MR. LEVINE: I understand.

THE COURT: And I'm not going to force the government to tell you everything that it knows about how this indictment came about. The agent said that he got into when his office received a tip and the tip also, as evidenced by the situation of the arrest, involves more than one law enforcement agency, so what press releases the government put out about harrassment, if they had said any more at that time with respect to this defendant, they could have been sued if they couldn't prove it. So, that is why they talked about just "harrassment" and the Bureau of Narcotics and Dangerous Drugs people didn't

find what they possibly expected when they went in there, so that is why this is just an IRS case.

* * *

[139] THE COURT: Let's suppose he is given the litany from the PD47 which is standard procedure, as you well know.

MR. LEVINE: You have now touched my final point.

THE COURT: Yes, I figures I would get to all of them, but as I see it, if he had been given the litany, on the [140] evidence I have heard in this case, that wouldn't have made one bit of difference.

MR. LEVINE: It would not.

THE COURT: Not one bit of difference. It wouldn't have influenced any action on the part of either the IRS Revenue Agents or Mr. Beckwith, not one bit.

MR. LEVINE: With the court's recognition of that, we have nothing further to submit, Your Honor.

THE COURT: Yes, I think that is the situation we have reached.

MR. HOFFMAN: Your Honor, I would disagree with that. I don't think this man, in any way, on this record, was sufficiently advised given the actual nature of the investigation that was being conducted.

THE COURT: I didn't follow that.

MR. HOFFMAN: He was not advised of the actual nature of the investigation they were conducting.

THE COURT: Well he wasn't advised of the actual nature of it. He wasn't told it was a net worth investigation, is that what you mean?

MR. HOFFMAN: He wasn't told that in any respect sufficient for him to know that this investigation was criminally oriented which it really was and I point out to the Court that page 30 of the opinion, the slip opinion in Stamp, where various cases are cited, and which refer to IRS agents [141] misleading the taxpayer into believing

that these are really civil in nature and not criminal, the Courts point out that it is not up to the taxpayer to know when civil might ripen into criminal prosecution.

[R-7, P 15]

EXHIBIT "B"

Memorandum of Interview

In re: Alvin A. Beckwith
Washington, D.C.

Date & Time: Wednesday, August 2, 1972
approximately 8:00 a.m. - 11:00 a.m.

Place: 12423 Kemp Mill Road
Silver Spring, Maryland

Person's present:

ALVIN A. BECKWITH – Taxpayer
Gary R. Peterson – Special Agent
E. Michael Fornili – Special Agent

Interview conducted by Special Agent Peterson

Special Agent Fornili and myself presented our credentials to ALVIN BECKWITH for his inspection. I introduced myself as a Special Agent with the Intelligence Division, Internal Revenue Service. I advised BECKWITH as follows:

> "As a special agent, one of my functions is to investigate the possibility of criminal violations of the Internal Revenue laws, and related offenses."

I told BECKWITH that I was conducting an investigation regarding his Federal income tax liability for each of the years 1966 through 1971. I told him that I wanted to ask him some questions. Before I began the questioning, I advised BECKWITH as follows:

"Under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any

way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding."

BECKWITH acknowledged that he understood his Constitutional rights and thereafter the questioning commenced.

ALVIN BECKWITH furnished the following information: His full name is ALVIN AUGUSTA BECKWITH, Jr; he does not use the junior, since his father is deceased; his nickname is "Sonny Reds" or "Sonny"; his social security number is 577-36-6686; he was born on August 13, 1929 at Washington, D.C.; his present address is 1818 Q Street, S.E., Apt. 11, Washington, D.C., and is currently employed as Manager for Colorado Liquors Inc., 5514 Colorado Avenue, N.W., Washington, D.C.

BECKWITH stated that the condition of his health is "fine". He stated he was never hospitalized, for any reason, during the years 1966 to the present date and that he is not currently under any doctor's care for any illness.

[R 9, p. 19]

NEWS RELEASE

INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
Tel. (202) WO 4-4021

For Release:
Tuesday,
Nov. 26, 1968

IR-949

IRS ADVISES TAXPAYERS OF RIGHTS IN FRAUD PROBES

Washington, D.C. — Changes in the procedure for advising taxpayers of their rights during an investigation conducted by a Special Agent of the IRS Intelligence Division were announced today by the Internal Revenue Service.

The new procedure goes beyond most legal requirements that are designed to advise persons of their rights.

One function of a Special Agent is to investigate possible criminal violations of Internal Revenue laws. At the initial meeting with a taxpayer, a Special Agent is now required to identify himself, describe his function, and advise the taxpayer that anything he says may be used against him. The Special Agent will also tell the taxpayer that he cannot be compelled to incriminate himself by answering any questions or producing any documents, and that he has the right to seek the assistance of an attorney before responding.

Previously, the Special Agent identified himself and described his function at the first meeting with the taxpayer but was not required to give further advice unless the taxpayer was in custody or the investigation proceeded beyond the preliminary stage.

IRS has made no change in its existing instructions that if it becomes necessary to interview a person who is in custody, an Agent must give a comprehensive statement of rights before any interrogation. This statement

warns the person in custody that he may remain silent and that anything he says may be used against him.

A person in custody also must be told that he has the right to consult or have present his own counsel before making a statement or answering any questions and that if he cannot afford counsel he can have one appointed by the U.S. Commissioner.

[R 7, p. 14]

EXHIBIT "A"

D.C. Liquor Seller Held In Tax Case

The manager of a D.C. liquor store has been indicted by a special U.S. District Court grand jury on charges of federal income tax evasion.

1818 Q St. SE, was indicted by

Alvin A. Beckwith Jr., of 1818 G St. SE, was indicted by the jury last week on charges of understating his income for the tax years of 1970 and 1971 by $19,000. Sources in the U.S. attorney's office said the indictment was part of a continuing program that has been described by that office as "legal harassment" of persons whom they believe to be connected with underworld narcotics activity here.

A press release by the U.S. attorney's office pointed out that Beckwith, who manages the Colorado Liquor Store, 5514 Colorado Ave. NW, was arrested by Bureau of Narcotics and Dangerous Drugs agents as well as Internal Revenue agents.

Beckwith is free on personal bond.

BEST COPY AVAILABLE

[R 13] [Caption Omitted in Printing]

STIPULATION

* * *

2. That on August 2, 1972, in an interview with Special Agents Gary R. Peterson and E. Michael Fornili, the defendant stated the following:

A. On December 31st of each of the calendar years of 1965 through 1969, inclusive, he never had more than $300.00 cash on hand;

B. that during the calendar year 1970, his cash on hand increased by $700.00;

C. that during the calendar year 1971, his cash on hand increased by $500.00;

D. that he has been employed as the manager of Colorado Liquors, 5514 Colorado Avenue, N.W., Washington, D.C. since April 13, 1970;

E. that during the years 1960 through 1969, he was unemployed, except for about three months in 1966 when he worked as a stock clerk for a hardware company in Rockville, Maryland.

F. that during the years of 1966 through 1970, he won money from gambling (cards, craps, and horse races);

G. that the defendant's income tax returns for the years 1970 and 1971 reviewed by him upon their presentation by Special Agent Gary R. Peterson were identified by the defendant as his tax returns and did bear his signature (see Exhibits 1 and 2);

H. that the defendant's tax returns for the years 1970 and 1971 were prepared in the District of Columbia by the accounting firm of Sinrod and Tash and

that the returns were signed and mailed in the District of Columbia;

I. that all the taxable income the defendant received during 1971, was reflected on his tax return and that to the best of his knowledge he did not incur any expenses which were tax deductible and not reflected on his return;

J. that from 1960 to August 2, 1972, the defendant received no inheritance or gifts of money.

* * *

24. Internal Revenue Agent Edward D. Maggio would testify

A. that he is a certified public accountant trained and experienced in the auditing and computation of the returns and would qualify as an expert to give an opinion on Federal income tax obligations;

B. that based on the figures assembled by Special Agent Gary R. Peterson incorporated in this stipulation, the computation of the defendant's Federal income tax liability for the calendar year 1971, is set forth as follows:

Total Expenditures (paragraphs 2-20, inclusive)	$30,424.71
Less: Non-taxable sources of income (paragraph 21)	2,091.77
Adjusted Gross Income	$28.332.94
Less: Itemized Deductions	$1,670.92
Exemptions (Paragraph 22)	2,025.00
Corrected Taxable Income	$24,637.02

Less: Taxable Income Reported (Exhibit No. 1)	$10,821.78 *
CRIMINAL UNDERSTATEMENT	$13.815.24
Income Tax due and owing	$8.348.51
Income Tax per tax return	2,452.97
INCOME TAX DEFICIENCY	$5,895.54

* [Footnote deleted in printing]

* * *

26. The defendant offers no factual defense to this stipulated record.

/s/ Barry W. Levine

BARRY W. LEVINE
Assistant U.S. Attorney

ALVIN A. BECKWITH
Defendant

HERBERT B. HOFFMAN, ESQ.
Counsel for Defendant.

UNITED STATES DISTRICT COURT

United States of America vs.

Defendant: Alvin A. Beckwith, Jr., a/k/a Alvin A. Beckwith

DISTRICT OF COLUMBIA Criminal No. 480-73

JUDGMENT/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date: May 2, 1974

WITH COUNSEL: Herbert Hoffman, Esq.

The court has adjudged on March 21, 1974, that, the defendant having pleaded Not Guilty, and there being a finding of guilty, Defendant has been convicted as charged in Count Two of the offense of ATTEMPT TO EVADE AND DEFEAT TAX in violation of Title 26, Section 7201, United States Code.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS and to pay a fine of TEN THOUSAND DOLLARS ($10,000.00) plus Court Costs.

It is further ordered that the remaining count of the indictment be dismissed.

* * *

Supreme Court, U. S.
FILED
JUN 3 1975
MICHAEL RODAK, JR., CLERK

No. 74-1243

In the Supreme Court of the United States

OCTOBER TERM, 1974

ALVIN A. BECKWITH, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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OCTOBER TERM, 1974

No. 74-1243

ALVIN A. BECKWITH, JR., PETITIONER

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES

After a non-jury trial in the United States District Court for the District of Columbia, petitioner was found guilty of willfully attempting to evade federal income taxes, in violation of 26 U.S.C. 7201. He was sentenced to five years' imprisonment and fined $10,000 and the costs of prosecution. The court of appeals affirmed (Pet. App. A, pp. 1a-5a).

The sole contention raised by the petition is that certain statements made by petitioner to agents of the Intelligence Division of IRS during their investigation should have been suppressed because the agents did not warn petitioner of his constitutional rights in accordance with *Miranda* v. *Arizona*, 384 U.S. 436.

The interview in question took place at the home of a friend of petitioner. During the interview, petitioner was neither arrested nor detained against his will.

As the court of appeals noted, petitioner was free to leave at any time and in fact was out of the agents' presence more than once (Pet. App. A, p. 3a). Moreover, the agents gave petitioner the standard Internal Revenue Service warning, which advised him, among other things, that his statements might be used against him in a criminal proceeding.[1] Under these circumstances, the court of appeals concluded that, there having been no custodial interrogation, petitioner's statements were admissible against him at his trial.

The decision below is in accord with the decisions of every other circuit but the Seventh Circuit, all of which have held that agents of the Intelligence Division of the Internal Revenue Service are not required to give a taxpayer under investigation any warning with respect to his constitutional rights, if the taxpayer has not been

---

[1]The standard Internal Revenue Service warning given to petitioner by the agents was as follows (R. 7, p. 15; Pet. App. A, p. 4a, n. 6):

> As a special agent, one of my functions is to investigate the possibility of criminal violations of the Internal Revenue laws, and related offenses.
>
> Under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may by used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding.

taken into custody.[2] Only the Seventh Circuit in *United States* v. *Dickerson*, 413 F.2d 1111, has held that once the Internal Revenue Service assigns a case to its Intelligence Division for investigation of possible criminal violations of the tax laws, the agents cannot interview the taxpayer without first providing him the warning required by this Court in *Miranda* v. *Arizona*, 384 U.S. 436, as a precondition to admissibility of statements made during custodial interrogation. In *Dickerson*, the court rejected the argument that *Miranda* had no application to a case where the taxpayer was interviewed in a non-custodial setting.

As Chief Judge Bazelon observed in this case, the test under *Miranda* is "whether the suspect 'has been taken into custody or otherwise deprived of his freedom in any significant way' " (Pet. App. A, p. 3a). Thus, *Miranda* does not require that a special agent of the Internal Revenue Service advise a taxpayer under investigation of his constitutional rights unless he interviews the taxpayer after taking him into custody. We believe it requires no extended argument to support the correctness of the disposition of this case and of the decisions of the ten circuits that have rejected arguments, such as peti-

---

[2]See, *e.g.*, *Taglianetti* v. *United States*, 398 F.2d 558, 566 (C.A. 1), affirmed on another ground, 394 U.S. 316; *United States* v. *Mackiewicz*, 401 F.2d 219, 221-222 (C.A. 2), certiorari denied, 393 U.S. 923; *United States* v. *Jaskiewicz*, 433 F.2d 415, 417-420 (C.A. 3), certiorari denied, 400 U.S. 1021; *United States* v. *Browney*, 421 F.2d 48, 51-52 (C.A. 4); *United States* v. *Prudden*, 424 F.2d 1021, 1027-1031 (C.A. 5), certiorari denied, 400 U.S. 831; *United States* v. *Stribling*, 437 F.2d 765, 771 (C.A. 6), certiorari denied, 402 U.S. 973; *United States* v. *MacLeod*, 436 F.2d 947, 950 (C.A. 8), certiorari denied, 402 U.S. 907; *United States* v. *Robson*, 477 F.2d 13, 16 (C.A. 9); *Hensley* v. *United States*, 406 F.2d 481, 484 (C.A. 10); but cf. *United States* v. *Lockyer*, 448 F.2d 417, 422 (C.A. 10).

tioner advances, for what would constitute a radical extension of *Miranda* and a sharp departure from the *ratio decidendi* of that case.

Since the time of the *Dickerson* decision, there have been a number of certiorari petitions filed by defendants in tax prosecutions seeking review, as does petitioner here, on the ground of the conflict created by *Dickerson*. However, because the agent in *Dickerson* gave the taxpayer no warning and the Internal Revenue Service adopted in 1967 a "modified *Miranda* warning" to be used in such cases (see n. 1, *supra*), we have consistently opposed certiorari in such cases.[3] In opposing such petitions, we have suggested that the Internal Revenue Service's standard warning might be expected to be deemed sufficient by the Seventh Circuit, thereby obviating the need for this Court to resolve the conflict of decisions.

It now appears, however, that the conflict of decisions will persist. In *United States* v. *Oliver*, 505 F.2d 301, the Seventh Circuit held that the same Internal Revenue Service warning given in this case (see 505 F.2d at 303-304, n. 5) was inadequate under *Miranda*; it accordingly reversed Oliver's conviction for income tax evasion. In so holding, the court stated (505 F.2d at 304, n. 6):

[3]See, *e.g.*, *United States* v. *Mitchell*, 432 F.2d 354 (C.A. 1), certiorari denied, 401 U.S. 910; *United States* v. *Caiello*, 420 F.2d 471 (C.A. 2), certiorari denied, 397 U.S. 1039; *United States* v. *White*, 417 F.2d 89 (C.A. 2), certiorari denied, 397 U.S. 912; *United States* v. *Jaskiewicz*, 433 F.2d 415 (C.A. 3), certiorari denied, 400 U.S. 1021; *United States* v. *Prudden*, 424 F.2d 1021 (C.A. 5), certiorari denied, 400 U.S. 831; *United States* v. *Tonahill*, 430 F.2d 1042 (C.A. 5), certiorari denied, 400 U.S. 943; *United States* v. *Miriani*, 422 F.2d 150 (C.A. 6), certiorari denied, 399 U.S. 910.

> It is somewhat surprising to find that, some six years after *Miranda*, and three years after *Dickerson*, the I.R.S. continued to utilize warnings that failed to comply in these significant respects with the Supreme Court's mandate.

Although the facts in *Oliver* might arguably distinguish it from this case,[4] we are now persuaded that there exists a continuing conflict between the Seventh Circuit and all of the other courts of appeals as to whether a special agent of the Internal Revenue Service investigating potential criminal violations of the tax laws is required to give full *Miranda* warnings prior to interviewing the taxpayer in a non-custodial setting.[5]

This conflict should, in our view, now be resolved by this Court. However, in view of the overwhelming weight of appellate authority supporting the decision of the court of appeals in this case and the absence of support for the decisions in *Dickerson* and *Oliver*, either in *Miranda* or in other substantial precedent, we believe this

[4]While Oliver was being questioned at the office of special agents of the Intelligence Division, a person appeared claiming to be bearing a message for Oliver from an attorney. Oliver was not advised of this fact, and the questioning continued (see 505 F.2d at 304-306).

[5]In *Miranda*, the Court held that the person in custody must, prior to interrogation, be advised that he has the right to remain silent and that anything he says will be used against him, that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him (384 U.S. at 467-473). The standard Internal Revenue Service warning employed in this case (see n. 1, *supra*) requires the special agent to state to the taxpayer that he cannot compel him to answer any questions or to submit any incriminatory information, rather than advise him that he has a right to remain silent. While the Internal Revenue Service warning advises the taxpayer that he may seek the assistance of an attorney before responding to the special agent's questions, it does not state that an attorney will be appointed if the taxpayer is indigent.

Court may deem it appropriate to grant certiorari and summarily affirm. A similar course has been followed in the past for resolution of conflicts among the circuits when the Court evidently believed that full briefing and argument was unnecessary to enable it to reach a decision. See, *e.g.*, *Taylor* v. *United States*, 414 U.S. 17; *Musser* v. *United States*, 414 U.S. 31.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JUNE 1975.

Supreme Court, U. S.
FILED
AUG 20 1975
MICHAEL [illegible], CLERK

IN THE

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OCTOBER TERM, 1974

No. 74-1243

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UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

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TABLE OF CONTENTS

Page

OPINIONS BELOW 1

JURISDICTION 2

QUESTIONS PRESENTED 2

CONSTITUTIONAL PROVISIONS INVOLVED 2

STATEMENT 3

SUMMARY OF ARGUMENT 7

ARGUMENT

As the Target of Legal Harassment by Way of an Exclusively Criminal Tax Probe Petitioner Was Entitled to Full Miranda Warnings 8

A. At the Time of the Critical August 2, 1972 Interview, the Investigation Had Reached the Accusatory Stage 8

1. Extreme focus 8

2. Critical stage 16

B. Interrogations by Tax Agents Involve Coercive Elements Equivalent to Station House Interrogation 18

1. The United States employs a self-taxing system 18

2. Most citizens justifiably feel they are discussing an exclusively civil matter 20

3. The very complexities of the tax laws create a heightened need for awareness of constitutional rights to silence and to counsel 22

4. Agents are trained to discourage the free exercise of constitutional rights 26

5. During an interview a taxpayer experiences justifiable social and economic fears which compel cooperation 27

Page

6. The combined effect of all of the above 29

C. The Investigative Procedure Here Used Is Violative of Due Process 32

D. The Warnings Accorded Petitioner Were Insufficient Under Miranda 37

1. Right to remain silent 40

2. Right to Have an attorney present during interrogation 37

3. Right to an appointed attorney 38

4. Right not to produce documents 39

E. There Exists a Minimal Burden of Corrective Action 40

CONCLUSION 41

TABLE OF CASES

Cases:

Ancira v. State, 516 S.W.2d 924 (Tex.) 14

Brown v. Beto, 468 F.2d 1284 (5th Cir.) 14

Bumper v. North Carolina, 391 U.S. 543 25

Donaldson v. United States, 400 U.S. 517 20

Escobedo v. Illinois, 378 U.S. 478 ..... *passim*

Frank v. Maryland, 359 U.S. 360 34

Gideon v. Wainright, 372 U.S. 335 15

Gilbert v. California, 388 U.S. 263 17

Green v. United States, 411 F.2d 588 (10th Cir.) 39

Haley v. Ohio, 332 U.S. 596 25

Hamilton v. Alabama, 368 U.S. 52 ..... 15, 17

Holland v. United States, 384 U.S. 121 ..... 24, 33

Jenkins v. McKeithen, 395 U.S. 411 34

Page

Cases, continued:

Killough v. United States, 114 U.S.App. D.C. 305, 315 F.2d 241 41

Mallory v. United States, 354 U.S. 449 41

Massiah v. United States, 377 U.S. 201 ..... 15, 17

Mathis v. United States, 391 U.S. 1 ..... 10, 16, 31

Michigan v. Tucker, 94 S. Ct. 2357 ..... 11, 39

Miranda v. Arizona, 384 U.S. 436 ..... *passim*

Montoya v. United States, 392 F.2d 731 (5th Cir.) 39

Morrissey v. Brewer, 408 U.S. 471 33

Orozco v. Texas, 394 U.S. 324 10

Paine v. Arkansas, 356 U.S. 560 25

People v. Collin, 232 Cal. App.2d 681, 43 Cal. Rept. 57 18

People v. Layton, 29 Cal. App.3d 349, 105 Cal. Rept. 509 18

Pointer v. Texas, 380 U.S. 400 17

Powell v. Alabama, 287 U.S. 45 17

Randall v. Estelle, 492 F.2d 118 (5th Cir.) 14

Schmerber v. California, 384 U.S. 757 40

Silverthorne Lumber Company v. United States, 251 U.S. 285 12

Smith v. United States, 348 U.S. 147 25

Spano v. New York, 360 U.S. 315 ..... 15, 17

State v. Godfrey, 131 N.J. Super. 168, 329 A.2d 75 18

Stern v. Robinson, 262 F.Supp. 13, (W.D. Tenn.), appeal dismissed, 391 F.2d 601 (6th Cir.) 40

Stovall v. Denno, 388 U.S. 293 17

Thomas v. United States, 386 U.S. 975 29

United States v. Calderon, 348 U.S. 160 25

United States v. Dickerson, 413 F.2d 1111 (7th Cir.) 30

Cases, continued: Page

United States v. Dickerson, 291 F.Supp. 633 (N.D. Ill.) 12, 19, 21

United States v. Fox, 403 F.2d 97 (2nd. Cir.) 38, 39

United States v. Garcia, 496 F.2d 670 (5th Cir.) 14

United States v. Maius, 378 F.2d 716 (6th Cir.) cert. den., 389 U.S. 905 22

United States v. Mandujano, 496 F.2d 1050 (5th Cir.) 34, 36

United States v. Miller, 261 F.Supp. 442 (D. Del.) 39

United States v. Mullings, 364 F.2d 173 (2d. Cir.) 38

United States v. Oliver, 505 F.2d 301 (7th Cir.) 13, 21, 30

United States v. Phelps, 443 F.2d 246 (5th Cir.) 14

United States v. Prior, 381 F.Supp. 870 (M.D. Fla.) 34

United States v. Rangel, 496 F.2d 1059 (5th Cir.) 34

United States v. Sherman, U.S. Dist. Ct. D.C. Docket No. 74-187 10

United States v. Skelly Oil Company, 394 U.S. 678 23

United States v. Turzyanski, 268 F.Supp. 847 (N.D.Ill.) 12, 16

United States v. Wade, 388 U.S. 218 17

United States v. Wong, No. 74-1636 (Sep. 23, 1974, 9th Cir.) 34, 35

White v. Maryland, 373 U.S. 59 ..... 15, 17

Windsor v. United States, 389 F.2d 530 (5th Cir.) 39

Constitutional Provisions

Constitution of the United States:

Amendment V 2

Amendment VI 2

Statutes

Internal Revenue Code of 1954, As Amended

26 U.S.C. §6001-6010 19

26 U.S.C. §6212-6213 28

26 U.S.C. §7201 3

26 U.S.C. §7203 19

Miscellaneous: Page

Andrews, "The Right to Counsel in Criminal Tax Investigations under Escobedo and Miranda: The 'Critical Stage,' " 53 Iowa L.Rev. 1074 ..... 14, 18, 29, 30

1965 Annual Report of Commissioner Internal Revenue 20

1969 Annual Report of Commissioner Internal Revenue 20

Benjamin Franklin Letter to M. Leroy, 1789 18

Committee on Tax Policy 1970-1971 New York State Bar Association, Tax Section, "A Report on Complexity and the Income Tax," 27 Tax Law Review 325 23

Duke, "Prosecutions for Attempts to Evade Income Tax: A Discordant View of a Procedural Hybrid," Yale L.J. 1 (1966) ..... *passim*

Forrester, "Constitutional Rights of the Taxpayer in a Tax Fraud Investigation," 42 Tulane L.Rev. 862 (1968) 30

Hearings before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary 1179 28

Internal Revenue Service Audit Technique Handbook §10.90(2) 26

Internal Revenue Service Press Release, Oct. 3, 1967, CCH 67-2, Par. 9489 n.9 37

Internal Revenue Service Training No. 3158-01(5-73) CCH Federal Tax Reports No. 29 June 6, 1973 ..... 26, 27, 32

§2.034 26

§3.04 27

§4.013 27

Lay, "Right to Counsel in Criminal Tax Investigations," 43 Indiana L.J. 69 (1969) 30

Lipton, "Constitutional Rights in Criminal Tax Investigations," 45 FRD 293 (1968) 20, 30

Miscellaneous, continued: Page

Simmons, "The Shift of Emphasis Theory: Constitutional Rights of Taxpayers in Criminal Fraud Investigations in Light of Miranda v. Arizona," 20 Syracuse L.Rev. 725 (1969) 30

Skees, 46 Ind. L.J. 361 (1971) 30

Surrey, "Complexity and the Internal Revenue Code: The Problem of the Management of Tax Detail," 34 Law and Contemporary Problems 673 (1969) 14

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Weiss, 25 Journal of Taxation 26 (1966) 8, 15, 30

IN THE

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OCTOBER TERM, 1974

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ALVIN A. BECKWITH, JR.,

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ON WRIT OF CERTIORARI TO
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BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the Court of Appeals is unreported. It is reproduced in the Appendix to the Petition for Certiorari in this case (Pet. App. 1a). The District Court wrote no opinion but gave an oral ruling which is found at Pet. App 1b-2b.

JURISDICTION

The opinion of the Court of Appeals was filed on January 22, 1975. Petitioner filed a timely petition for re-hearing and suggestion for re-hearing *en banc*, which was denied by order of the Court of Appeals filed March 3, 1975. The petition for *certiorari* herein was filed April 2, 1975. This Court granted that petition June 16, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Fifth and the Sixth Amendments to the Constitution of the United States entitled petitioner to complete *Miranda* warnings by Special Agents of the Intelligence Division of the Internal Revenue Service during the "critical" August 2, 1972, interview, which interview took place during the accusatory stage of a solely criminal tax investigation at a time when appellant was a "target defendant" and the subject of "legal harassment" by the Government which believed petitioner to be an illegal narcotics trafficker but had absolutely no proof of such criminal activity?

CONSTITUTIONAL PROVISION INVOLVED

Constitution of the United States of America, Amendment V:

> No person shall be * * * compelled in any criminal case to be a witness against himself, nor to be deprived of life, liberty, or property, without due process of law; * * *

Amendment VI:

> In all criminal prosecutions, the accused shall * * * have the assistance of counsel for his defense.

STATEMENT

Petitioner was charged with two (2) counts of attempting to Evade and Defeat Federal Income Taxes in violation of 26 U.S.C. §7201 by indictment filed June 6, 1973, in the District Court for the District of Columbia. On October 4, 1973, the Honorable Aubrey Robinson heard and denied petitioner's Motion to Suppress Statements and Evidence. Thereafter on March 21, 1974, petitioner waived his right to jury trial and was found guilty on a stipulated record as to Count 2 of the indictment. On May 2, 1974, petitioner was sentenced to a maximum term of five (5) years imprisonment plus a $10,000 fine plus court costs. Count 1, which had been severed on the date of trial was then dismissed. Upon his appeal to the District of Columbia Circuit, his conviction was affirmed and his petition for rehearing and suggestion for re-hearing *en banc* to that Court were denied.

The theory of prosecution upon which petitioner stands convicted was the "net worth" method of proving a criminal understatement on his 1971 Federal Tax Return. Prior to trial, petitioner, his trial counsel, and the Government entered into a detailed stipulation covering some 60 items and nine pages of exhibits (R. 13). This stipulation saved the prosecution from calling over 100 witnesses.

Crucial to the prosecution's case was stipulation number 2 (App. 70-71) which covered some 10 different statements made by petitioner during his initial interrogation by two Special Agents of the Intelligence Division of the Internal Revenue Service on August 2, 1972. These statements of defendant covered his sources of income prior to 1972, his cash on hand each year from 1965 through 1971 and certain other important facts concerning the preparation of the computations on his 1971

Federal Income Tax Returns. There is substantial agreement between the parties that, without the starting point provided by Stipulation No. 2, the prosecution would not have had a provable case against petitioner.

It was from the starting point provided by petitioner's August 2, 1972 statements that a taxable income of $24,638.02 was computed for petitioner in 1971. This in turn showed a criminal understatement of $13,815.24 and an income tax deficiency of $5,895.54 (Stipulation No. 24, R. 13, pp. 6-7, App. 71-72). Petitioner presented no factual defense to the stipulated record (Stipulation No. 26, App. 72) and was thus found guilty.

Prior to trial, petitioner moved to suppress all statements he made to Special Agents of the Internal Revenue Service on August 2, 1972. At the hearing the Court noted (App. 7), and the Government conceded (App. 11), that the involved Special Internal Revenue Agents "were focusing on this defendant" from the outset and that the IRS never had any civil intention with respect to petitioner. Further, it was clear, and the judge took into account, that petitioner had been labeled as a target by the Justice Department and the criminal investigation conducted thereafter was directed only at returning an indictment against him. (See Press Release App. 69)[1]

Evidence at this hearing showed that petitioner was a 44-year old, black, ninth-grade dropout who never had any contact with the preparation of tax returns. Although he had had an accountant file returns for him in the past, he had never personally prepared nor filed a tax return in his entire life and, although he had been once previously arrested in 1963, he had never theretofore

[1]This Press Release was considered by the trial judge (App. 62) and appeared in the record below at R. 7, p. 14, Exhibit A.

been advised of his constitutional rights to counsel and against self-incrimination. (App. 44-45.) After the interview, petitioner felt he had said nothing to incriminate himself (App. 48.).

The two Special Agents who conducted the August 2, 1972 interview testified that they were members of the Intelligence Division and their function was exclusively concerned with criminal violations of the Revenue laws. On said date they made their initial unannounced appearance at petitioner's home at 8:00 A.M. After petitioner finished dressing, they read to him from a form card printed by the Internal Revenue Service (App. 46-47) (R. 7, p. 15) (App. 65-66). More than four months prior to March of 1972, they had received a tip from a confidential informant (App. 9). Between March 29 and August 2, 1972, Agent Peterson and another agent did "a considerable amount of investigation about" petitioner (App. 11-12). It was Agent Peterson's purpose to interview petitioner and the second Special Agent was present as a witness (App. 13-14) Both Agents were armed (R. 19).

As is apparent, the Agents' warning to petitioner gave some advice as to his constitutional right to silence and counsel, but fell short of the minimum rights required by this Court in *Miranda v. Arizona,* 384 U.S. 436. Petitioner was not told "he had a right to remain silent or not to answer any questions." Nothing was said to petitioner "about net worth or about proving understatement of income or cash expenditure theories or anything like that" (App. 18). Indeed, after question-

ing petitioner for from fifteen to thirty minutes, Special Agent Peterson felt it necessary to determine if petitioner was able to read. The card was not signed by petitioner and petitioner was not asked to sign any waivers with regard to answering questions (App. 20-21). About this time, the agents learned that petitioner had a very limited education and that he had had no instruction in accounting or tax returns. The questioning continued from 8:00 A.M. until 11:00 A.M. without a break. (App. 22.) At that time the Special Agents requested that petitioner produce corporate books and records from the store where he was employed. Without seeking the advice of counsel, petitioner took the Special Agents directly to his place of business and turned over the requested records. (App. 27.)

In June of 1973, petitioner was indicted via original action of the Grand Jury and these Special Revenue Agents, accompanied by two agents from the Bureau of Narcotics and Dangerous Drugs, effected petitioner's arrest at his place of business. Petitioner has never been arrested for, nor charged with, the violation of any narcotic law.

Thereafter, the trial judge denied defendant's motion to suppress these statements and everything that flowed from them. (Pet. App. 1b-2b.) In entering into Stipulation No. 2 which formed the entire basis for the net worth theory of prosecution of the Government, it was clear that petitioner did not waive his challenge to the legality of the interview and the admissibility of said statements at trial.

SUMMARY OF ARGUMENT

The entire starting point for the "new worth" criminal understatement tax prosecution of petitioner was obtained from his own statements during an interview with agents from the Intelligence Division of the Internal Revenue Service. At the time of the interview these agents who have an exclusively criminal function were "legally harassing" petitioner by utilizing the tax laws to punish him for suspected, but unprovable, narcotic violations. Despite the fact that the investigation had reached the "critical" accusatory stage, petitioner was not accorded the full advice of rights dictated by *Miranda v. Arizona.* In addition, the interview of petitioner must be viewed in the light of the self-declaring nature of our tax system and its very complexity, the confusion on the part of taxpayers between the civil and criminal function of interviewing agents, and taxpayers' fears with respect to the economic and social consequences of non-cooperation. These factors combine with intentional IRS practices designed to frustrate the exercise of constitutional rights and create psychological restraints upon one in petitioner's circumstances severely limiting his freedom of action. Petitioner's Motion to Suppress in the District Court should have been granted.

Because there is some previous indication of fraud before a tax case is transferred to a Special Agent and because criminal tax defendants are rarely arrested, it is submitted that this administrative change of focus from civil to criminal, and not arrest, should constitute the point at which *Miranda* requirements attach.

In the light of the extreme Government focus upon petitioner and his disadvantaged position stemming from the complexity of the tax laws, the involved interview constituted a fundamentally unfair confrontation. The agents' failure to give full warnings combined with present IRS interviewing practices designed to obviate the assistance of counsel and to encourage self-incrimination so as to violate due process law.

No constitutionally permissible countervailing reason exists for the Government to continue refraining from the giving of full warnings since the burden of corrective action is minimal.

ARGUMENT

AS THE TARGET OF LEGAL HARASSMENT BY WAY OF AN EXCLUSIVELY CRIMINAL TAX PROBE PETITIONER WAS ENTITLED TO FULL MIRANDA WARNINGS

A. At the Time of the Critical August 2, 1972 Interview, the Investigation Had Reached the Accusatory Stage.

1. Extreme focus.

The involved special agents testified that their investigation of petitioner commenced in March of 1972, more than four months prior to their unannounced interview (App. 9). There was no civil audit by revenue agents that could be thought of as routine or done at random. The trial judge assumed (App. 7) that there was never any civil intention on the part of the Government with respect to petitioner. Income tax violators are seldom arrested,[2] petitioner not only was subjected to arrest, but it was effected by the combined forces of revenue and

[2]See Weiss, 25 *Journal of Taxation* 26 (1966) at 27.

narcotic agents (App. 39). After his arrest, the local United States Attorney explained the prosecution's unusual interest in petitioner by way of press release which in part read:

> Sources in the U.S. attorney's office said the indictment was part of a continuing program that has been described by that office as "legal harassment" of persons whom they believe to be connected with underworld narcotics activity here (App. 66).

Neither the authenticity nor the accuracy of this release has been disputed at any time by the United States. It was presented to the trial judge and considered by him (R. 7, p. 14, Ex. A, App. 62, 69).

Petitioner has never been arrested for or charged with any narcotic offense. The peculiar focus with which the Government regarded peitioner in 1972, however, emphasizes the need for his being accorded full *Miranda* warnings. When the special agents visited petitioner, it was not for the purpose of seeing whether a tax crime had been committed, nor was it, as the Court of Appeals erroneously thought, because of gambling activities (Pet. App. 2(a)), but rather because of suspected, but unprovable, narcotics trade involvement. While the Government properly brings its taxing power to bear upon the relatively innocuous activity of gambling in order to avoid the loss of taxable revenues, different Government interests are involved with suspected narcotic trafficking; incarceration, not revenue, is the goal of law enforcement agents.[3] Petitioner submits that in these circumstances

[3]From the fact that a maximum sentence, maximum fine and court costs were imposed, it must be inferred that the sentencing judge held similar views. Petitioner's record prior to this case consisted only of two minor gambling violations in the mid-1960's.

[footnote continued]

the Constitution entitles him to a full and fair warning as to his privilege against self-incrimination and right to counsel before the official harassment and the complexities of the tax laws combine to convict him out of his own mouth.

It is clear that the minimal procedural requirements of *Miranda v. Arizona,* 384 U.S. 436, apply to tax investigations. *Mathis v. United States,* 391 U.S. 1. It is also well-established that the mere fact that the interview took place in petitioner's home does not relieve the Government of the duty to comply with the minimum requirements of *Miranda. Orozco v. Texas,* 394 U.S. 324.

The Court of Appeals rejected petitioner's *Miranda* argument on the ground that he was not in full custody at the time of the interview. Petitioner respectfully submits that in so doing the Court erroneously ignored the record showing of extreme prosecutorial focus upon him.

The *Miranda* Court defined "custodial interrogation" as

> questioning initiated by law enforcement officers after a person has been taken into custody *or otherwise deprived of his freedom of action in any significant way* (384 U.S. at 436). (Emphasis added.)

In footnote 4 of that opinion, this Court said

> [t]his is what we meant in *Escobedo* when we spoke of an investigation which had focused on an accused.

The more typical tax evasion sentence is exemplified by that of Sherman A. Thomas, a District of Columbia doctor who was convicted of evading $21,213.18 in income taxes and sentenced to a two-month term of incarceration. *United States v. Sherman,* U.S. Dist. Ct. D.C. Docket No. 74-187.

In *Escobedo v. Illinois,* 378 U.S. 478, Danny Escobedo was arrested on suspicion of murder and taken to a police station for questioning. While being interrogated and without being advised of his Constitutional rights, Escobedo made statements admitting knowledge of the murder. In reversing his conviction, this Court held that a suspect is entitled to consult counsel during interrogation; that the interrogators were not engaged in "a general investigation of 'an unsolved crime' " but that their "purpose [was] to 'get him' to confess his guilt . . ."[4] Because the investigation had "begun to focus on a particular suspect," the "process [had shifted] from investigatory to accusatory .,. . and its purpose [was] to elicit a confession."[5]

Citing *Michigan v. Tucker,* 94 S.Ct. 2357, 2361, the United States argued below that *Escobedo* was "not to be broadly extended beyond the facts of that particular case." (Appellee's Brief pp. 8-9.) Petitioner submits that the *Tucker* decision was not addressed to the issue of entitlement to warnings. In that case the failure of the police to warn Tucker of his right to appointed counsel brought the case to the highest court; the issue was whether, given a *Miranda* violation, other evidence which the police uncovered by virtue of Tucker's statements need be suppressed. The Supreme Court said "no" in a limited opinion emphasizing that the trial judge has suppressed Tucker's own statements (94 S.Ct. at 2364) and the Court

> consider[ed] it significant to [its] decision . . . that the officer's failure to advise respondent of his right

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[4]Escobedo, supra, 378 U.S. at 485.

[5]Id. at 492.

to appointed counsel occurred *prior* to decision in *Miranda*. (94 S. Ct. 2365.) (Emphasis added.)

Escobedo was mentioned in the Tucker opinion only to point out that *Escobedo* did not compel the extreme exclusionary rule sought by the petitioner when the admittedly insufficient warnings had been given by the police prior to the date of the *Miranda* decision.

Rather than restricting *Escobedo,* it is clear the *Miranda* sought to extend it. On the same page that this Court cited *Escobedo* as explaining "custodial interrogation," the *Miranda* opinion reads:

> It was necessary in *Escobedo,* as here, to insure that what was proclaimed in the Constitution had not become but a "form of words," *Silverthorne Lumber Company v. United States,* 251 U.S. 285, 392 (1920), in the hands of Government officials. And it is in this spirit, consistent with our role as judges, that we adhere to the principles of Escobedo today. (384 U.S. 436, 444.)

Adopting the shift "from investigatory to accusatory" as its touchstone the Seventh Circuit requires the IRS to administer full *Miranda* warnings whenever a tax investigation shifts to the Intelligence Division. In *United States v. Dickerson,* 413 F.2d 1111, the court relied heavily upon a District Court decision, *United States v. Turzyanski,* 268 F.Supp. 847, where the District Court stated:

> [O]nce a taxpayer becomes the subject of a criminal tax investigation, as evidences by the referral of the investigation to the Intelligence Division or otherwise, our adversary process of criminal justice has become directed against him as a potential criminal defendant. Any evidence obtained from him is admissible only if the taxpayer furnished it after knowingly and voluntarily waiving his Constitutional rights and privileges.

> To hold otherwise would lead to the anomalous conclusion that a person suspected of bank robbery, sale of narcotics, murder, rape or other serious crime is entitled to greater protection of his constitutional rights than a person suspected of violating the internal revenue laws. For when the silent transition from civil to criminal investigation takes place in a tax case, the taxpayer being interrogated and asked to furnish his books and records is just as surely a prime suspect and candidate for criminal prosecution as the individual under interrogation as a suspect for other crimes. Id. at 850-851.

A leading law review commentator analyzes this issue as follows:

> . . . in a non-custodial interrogation, the duty to warn may depend on the purpose of the inquiries, which in turn may be ascertained by gauging the degree of the interrogator's suspicion. If the questions are put by one who 'knows' the suspect is guilty and who, consequently, is engaged in building a case rather than investigating a possible crime, then his subject may deserve the *Miranda* warnings, even though not under arrest . . .
>
> A supporting rationale might be that viewing the matter as of the time of the interrogation, the greater the likelihood that statements obtained will in fact be offered in a criminal prosecution, the less likely that the defendant would be willing to waive his privilege, and consequently, the greater the need for assuring that he knows of his rights. Duke, "Prosecutions for Attempts to Evade Income Tax: A Discordant View of a Procedural Hybrid," 76 *Yale L.J. 1,* 38 (1966)

The Seventh Circuit fully appreciates the effect of the Government's targeting a defendant for prosecution. In *United States v. Oliver,* 505 F.2d 301, 304-305 that Court said,

> The fact of custody is emphasized in the opinion as having the practical consequence of compelling the accused to make disclosures. But the test also differentiates between the questioning of a mere witness and the interrogation of an accused for the purpose of securing his conviction; the test serves the purpose "of determining when the adversary process has begun, i.e., when the investigative machinery of the Government is directed toward the ultimate conviction of a particular individual and when, therefore, a suspect should be advised of his rights." (Footnotes omitted.)

It is respectfully submitted that taking a suspect into custody was not the *sine qua non* of *Miranda* for requiring police to administer warnings.[6] The *Miranda* court viewed that one circumstance as the ordinary and readily definable turning point in a criminal proceeding:

> "It is at this point that our adversary system of criminal proceedings commences, distinguishing itself at the outset from the inquisitorial system recognized in some countries." 384 U.S. at 477.

In a tax investigation, it is when the Government focuses upon the suspect as an accused and not when he is physically restrained that *Miranda* warnings must be given. This is so, because arrests for tax fraud are rare.[7] Usually the first actual physical restraint upon a

[6]See United States v. Phelps, 443 F.2d 246 (5th Cir.); Brown v. Beto, 468 F.2d 1284 (5th Cir.); Randall v. Estelle, 492 F.2d 118 (5th Cir.); United States v. Garcia, 496 F.2d 670 (5th Cir.) Ancira v. State, 516 S.W.2d 924 (Tex. 1974).

[7]See Andrews, The Right to Counsel in Criminal Tax Investigations under Escobedo and Miranda: The "Critical Stage," 53 Iowa L. Rev. 1074 at 1085:

> It is only after an indictment is obtained that the taxpayer will be taken into custody.[56]
>
> [56]The concept of "custody" is foreign to the normal criminal tax investigation apparently because neither

[footnote continued]

> defendant is when he appears for sentencing (probably after he has exhausted his appellate rights) and surrenders to the U.S. Marshals to commence serving his sentence.
>
> Anyone familiar with IRS investigations knows that arrests in tax cases prior to indictment are virtually unknown, and arrests after indictment are highly unusual. * * * Weiss, 25 *Journal of Taxation* 26 at 27.

As will be shown hereafter, petitioner was under grave psychological restraints at the time of the involved interview and the Governmental action was fundamentally unfair. However, it is submitted that extreme focus in this case alone dictated that the agents administer full *Miranda* warnings. The Court has often held that the constitutional rights to be free from self-incrimination and to seek counsel deserve a greater protection after indictment. *Spano v. New York,* 360 U.S. 315; *Massiah v. United States,* 377 U.S. 201; *Hamilton v. Alabama,* 368 U.S. 52; *White v. Maryland,* 373 U.S. 59. See *Gideon v. Wainright,* 372 U.S. 335. While in this case at the time of the August 2, 1972 interview Petitioner had not yet been indicted, he was indicted virtually or putatively in the minds of the law enforcement agents. Since arrests are so infrequent in tax cases, the lack of physical restraint looms as insignificant.

In *Massiah, supra,* this Court rejected the Government's argument that the fact Massiah's liberty was not restrained somehow did not entitle him to the same constitutional protections as a man in custody.

> It is true that in the *Spano* case the defendant was interrogated in a police station, while here the

> flight of the suspect nor further criminal conduct is expected to occur and the crime itself is of a non-violent nature * * *

damaging testimony was elicted from the defendant without his knowledge while he was free on bail. But, as Judge Hays pointed out in his dissent in the Court of Appeals, "if such a rule is to have any efficacy, it must apply to indirect and surreptitious interrogations as well as those conducted in the jailhouse. In this case Massiah was more seriously imposed upon . . . because he did not even know that he was under interrogation by a Government agent. 377 U.S. 201, 206.

2. Critical stage

A civil investigator is required, whenever and as soon as he finds "definite indications of fraud or criminal potential," to refer a case to the Intelligence Division for investigation by a different agent who works regularly on criminal matters. * * *

Mathis v. United States, 391 U.S.1, 6 (n.2, Mr. Justice White dissenting); see *United States v. Turzyanski,* 268 F.Supp. 847, 850 (N.D. Ill.). Petitioner submits that after such a transfer from the civil agent to the Intelligence Division has taken place, all interviews between special agents and a taxpayer constitute "critical stages" for the taxpayer. This is so because of the following unique aspects of the criminal tax investigation:

a. There is never any question concerning criminal agency or identity. If a tax violation has occurred, the suspect is responsible.

b. There is no longer any civil function of the Internal Revenue Service by virtue of the assignment of an exclusively criminal investigator.

c. The existence of a criminal violation is virtually certain because of the preceding civil audit or, as in this case, because of the Government's decision that the tax

laws be utilized to punish the taxpayer for unrelated matters.

The "critical stage" of the criminal process has traditionally moved this Court to fashion safeguards to protect constitutional rights jeopardized at these crucial junctures in a criminal case. Beginning in 1932 with *Powell v. Alabama,* 287 U.S. 45 (period between arraignment and trial) and continuing in *Spano v. New York, supra* (interrogation after indictment), *Hamilton v. Alabama,* 368 U.S. 52 (arraignment), *White v. Maryland,* 373 U.S. 59 (preliminary hearing); *Massiah v. United States, supra,* (postindictment—defendant free on bond); *Escobedo v. Illinois, supra* (post-arrest interrogation); *Miranda* and through *United States v. Wade,* 388 U.S. 218; *Gilbert v. California,* 388 U.S. 263 (lineup identification); *Stovall v. Denno,* 388 U.S. 293 (preindictment showup identification), the Court has demonstrated a willingness to analyze a case and determine when there existed a Government focus on the accused and a concomitant need on the part of an accused to have his constitutional rights protected. These cases demonstrate that the "critical stage" is not a wooden concept but changes with differing fact patterns sometimes in the light of differing state laws and procedures. Compare *White v. Maryland, supra,* and *Pointer v. Texas,* 380 U.S. 400 at 402. As noted above, the Government had focused on petitioner four months prior to the interview; as will be demonstrated, petitioner was in great need of constitutional safeguards as is evidenced by the fact that he provided the starting point for the entire net worth prosecution out of his own mouth.

The "critical stage" doctrine provides the vehicle for the extension of the right to counsel to the criminal tax investigation over the objection that the

tax investigative procedure is "non-custodial." Common sense would seem to require it, and fairness to the taxpayer compels it. *Andrews, The Right to Counsel in Criminal Tax Investigations under Escobedo and Miranda:* The "Critical Stage," 53 *Iowa L. Rev.* 1074, 1117 (1968)[8]

B. Interrogations by Tax Agents Involve Coercive Elements Equivalent to Station House Interrogation.

The visit from the tax investigator has a psychologically coercive effect upon the taxpayer because of the following factors:

1. The self-declaring nature of the tax laws;

2. The justified assumption on the part of the average taxpayer that he is merely discussing a civil obligation;

3. The relative ignorance of taxpayers regarding what constitutes a criminal violation or incriminating statements under the tax laws;

4. IRS practices designed to jeopardize constitutional rights.

5. The taxpayer's justifiable fear that non-cooperation will prove very expensive and embarrasing.

1. The United States employs a self-taxing system.

> Our Constitution is in actual operation; everything appears to promise that it will last; but in this world nothing is certain but death and taxes.[9]

In this country, not only are taxes certain, but the law requires a filing of returns, the keeping of records, and

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[8]State courts have adopted this approach in applying Miranda. State v. Godfrey, 131 N.J.Super 168, 329 A.2d 75; People v. Layton, 29 Cal. App. 3rd 349, 105 Cal. Reptr 409; People v. Collin, 232 Cal. App.2d 681, 43 Cal. Rept. 57.

[9]Benjamin Franklin letter to M. Leroy, 1789.

the providing of almost any kind of information the Revenue Service requires.[10]

Against this "self-declaring" backdrop this Court must view petitioner's case. The myriad compulsory civil obligations naturally lead the average citizen to believe he has no choice but to answer any and all questions put by tax agents concerning his income. He is accustomed to providing information without specific request every April 15 (or more often during a year). It is all the more natural for the average taxpayer to assume he must cooperate when actually visited by revenue agents. "Only the rare taxpayer would be likely to know that he could refuse to produce his records to IRS agents." *United States v. Dickerson,* 413 F.2d 1111, 1116 (7th Cir.).

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[10]See 26 U.S.C. §7203, Internal Revenue Code of 1954 as amended

> Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under the authority thereof to make a return . . ., keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations shall, in addition to other penalties provided by law, be guilty of misdemeanor and, upon conviction thereof, shall be fined not more than $10,000.00, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

For the almost myriad list of returns, records, statements, etc. that can be required by the Internal Revenue Service, see Internal Revenue Code 1954, Subtitle F, Chapter 61, 26 U.S.C., §6001 through 6110. Of particular significance is §6001, which reads in pertinent part

> Whenever in the judgment of the Secretary or his delegate, it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statement, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

2. Most citizens justifiably feel they are discussing an exclusively civil matter.

In 1965 less than 3/10 of 1% of all returns audited were carried beyond the routine audit and civil deficiency stage. Even after a special agent was assigned to investigate a taxpayer, the chances were about 7 in 8 that prosecution would not be recommended.[11] In 1969 only 2,080 full-scale tax investigations were undertaken by the intelligence divisions. Only 1,049 resulted in recommendations for prosecution. In the cases not recommended for prosecution some $20,000,000 in deficiencies and penalties were earmarked for civil collection.[12]

> A visit from the tax man may be an unpleasant experience but both innocent and guilty taxpayers usually assume that all the tax man wants to talk about is *money*. That is, indeed, the purpose of most tax investigations. Not so, however, when a special agent of the Intelligence Division enters the picture.
>
> The average taxpayer does not know the difference between a special agent and a Revenue agent, and he is not made aware of the difference by any statement or warning that is adequate to the purpose. Indeed, much of the difficulty stems from the essential unfairness of the techniques employed by the investigating agents. *Lipton Constitutional Rights in Criminal Tax Investigations*, 45 F.R.D. 323, 337 (footnotes omitted).

Courts recognizing this basic misunderstanding on the part of taxpayers have required full *Miranda* warnings:

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[11]Duke, *supra* p. 13, 76 Yale L.J. 1, 35; 1965 Ann. Rep. of Comm. of Int. Rev. 23.

[12]Donaldson v. United States, 400 U.S. 517, 535 n. 17, citing 1969 *Ann. Rept. of Comm. of Int. Rev.* 28-31.

> Incriminating statements elicited in reliance upon the taxpayer's misapprehension as to the nature of the inquiry, his obligation to respond, and the possible consequences of doing so must be regarded as equally violative of constitutional protections as a custodial confession extracted without proper warnings.

United States v. Dickerson, 413 F.2d 1111, 1116 (7th Cir.).

> The practical effect of these misapprehensions during questioning of a taxpayer was to "compel" him to provide information that could be used to obtain his conviction in a criminal tax fraud proceeding, in much the same way that placing a suspect under physical restraint leads to psychological compulsion.

United States v. Oliver, 505 F.2d 301, 305 (7th Cir.). A leading author in this area has noted that uneducated taxpayers such as petitioner are not the only individuals guilty of this misapprehension. His theories also explain the imbalance[13] in the Circuit Courts of Appeal on the issue here involved:

> Trends in tax prosecution have for at least two decades been continuously running against the main currents in criminal procedure. By subtle doctrinal manipulation, the courts confer more and more discretion on invoking officials and reduce the roles of judge and jury. The judge's role is limited by his abdication of responsibility to define the offense and to determine the sufficiency of evidence. The jury's function is restricted by a procedural panoply

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[13]For a list of cases contrary to the Seventh Circuit position espoused herein and by most law review commentators see footnote 2 of the "Memorandum for the United States" (p.3) filed in response to the petition for certiorari in this case.

which prevents a full and fair test of the Government's proofs.

The main support for a different course of doctrinal development in tax prosecutions than in criminal procedure generally is the fact that civil and criminal sanctions apply to the same conduct and are invoked by the same officials. Tax agents act in a dual capacity, making their investigations ambiguous and creating powerful pressures for self-incrimination. Courts frequently confer procedural advantages upon the Government, and deny them to the accused, by labeling the problem as one of "civil" or "criminal" procedure, as the context requires. A tax prosecution is a procedural hybrid.

Duke, op cit. 76 Yale L.J. 1, 2-3.

3. The very complexities of the tax laws create a heightened need for awareness of constitutional rights to silence and to counsel.

This Court has found it neccssary to ensure that citizens charged with common law crimes such as murder (Escobedo) and rape (Miranda) surrender constitutional rights only in a knowing and truly voluntary manner. Thus, *Miranda* set down minimum "prophylactic" objective requirements without which statements could not be admitted into evidence. Petitioner acknowledges that any legal proceeding may be complex, but points out that on the whole a citizen appreciates what he is up against in terms of potential consequences when arrested for these common law offenses. This is not true of the tax laws. That the tax laws of this country are a maze of complexities to all but the specialist is an irrefutable proposition.[14]

[14]See generally Surrey, "Complexity and the Internal Revenue Code: The Problem of the Management of Tax Detail," 34 *Law and Contemporary Problems* 673 (1969).

It has even been argued that this Court lacks the necessary expertise in this area:

> If we were trained in the art and science of taxation, we might serve a useful function. But taxation is a specialty in which we have only sporadic and no continuous experience. * * *
>
> It is therefore the rare tax case we should consider, except the even rarer Constitutional case. Mr. Justice Douglas dissenting in *United States v. Skelly Oil Company*, 394 U.S. 678, at 690-691.

Alone in an interview with the experienced agent[15] from the Intelligence Division, who has prepared for the interview (in this case for four months), the average taxpayer is at a distinct disadvantage analogous to the predicament of the rape suspect within the confines of the police station. However, the rape suspect under interrogation (whether guilty or innocent) has a much better grasp and appreciation of what is or is not incriminating and is thus in a better position to make an intelligent decision whether to waive his constitutionally protected right to silence. The complexity of the tax laws deprives all but the most sophisticated of their right to intelligent choice.[16]

[15]See Committee on Tax Policy 1970-1971 New York State Bar Association, Tax Section, "A Report on Complexity and the Income Tax," 27 *Tax Law Review* 325 at 330

> Nor should we ignore the impact of complexity and ambiguity on corruption in the administration of the tax law. It was only ten years ago that in at least one region of the country substantial bribery and corruption were discovered. A revenue agent's proficiency in technicalities that if applied would adversely affect taxpayers, but the non-application of which cannot be detected on review, affords temptation to Internal Revenue officials and taxpayers alike.

[16]See *Miranda, supra*, 384 U.S. at 444: "The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently."

This case presents a striking example of how these complexities work to foster unwitting self-incrimination. The legally significant results of the special agents' interview are embodied in stipulation No. 2 (App. 70-71). Petitioner told the agents that between 1965 and 1969 he never had more than $300 cash on hand, that his cash on hand increased $700 in 1970 and by $500 in 1971, that for 1971 he did not incur any expenses which were tax deductible and not reflected on his return, that from 1960 to August 2, 1972, he received no inheritance or gifts of money.

As would be the case with most people, petitioner obviously thought his statements regarding these modest amounts were serving his interest and probably minimizing any potential civil deficiency.[17] On the contrary, out of his own mouth he had given the prosecution proof of the most essential and significant element in a net worth criminal understatement case, the *starting point.*

> [A]n essential condition in cases of this type is the establishment, with reasonable certainty, of an opening net worth, to serve as a starting point from which to calculate future increases in the taxpayer's assets. The importance of accuracy in this figure is immediately apparent, as the correctness of the result depends entirely upon the inclusion in this sum of all assets on hand at the outset. * * * *Holland v. United States* 348 U.S. 121, 132.

The involved agents acted in conformity with usual IRS practices in obtaining such verbal admissions from defendant with an intent to use them in later prosecu-

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[17]Whether these statements were true or false is, of course, not significant for *Miranda* purposes. "[T]he prosecution may not use statements, whether exculpatory or inculpatory, ..." 384 U.S. 436 at 444.

tion. See *Duke, supra,* 76 Yale L.J. 1 at 16-20, "Defendants' Admissions—A Bedplate of the Typical Case." This Court has taken specific note of the inherent psychological pitfalls present in an interview between a tax agent and unsophisticated taxpayer:

> 5. In many cases of this type, the prosecution relies on the taxpayer's statements, made to revenue agents in the course of their investigation, to establish vital links in the Government's proof. But when a Revenue agent confronts the taxpayer with an apparent deficiency, the latter may be more concerned with a quick settlement than an honest search for the truth. Moreover, the prosecution may pick and choose from the taxpayer's statement, relying on the favorable portion and throwing aside that which does not bolster its position. * * * *Holland, supra,* 348 U.S. 121, 128-129.

In addition, this Court has recognized the untrustworthiness of such statements by requiring corroboration. *United States v. Calderon,* 348 U.S. 160; *Smith v. United States,* 348 U.S. 147.

Petitioner does not request any rule requiring agents to educate a taxpayer prior to an interview. However, for purposes of assessing the existence of psychological restraint, it is emphasized that the interviewee is adrift on a sea of complexity without a paddle or guiding star and unlike the suspect who is the focus of a common law crime, the taxpayer has no starting point from which to assess the possibility of self-incrimination. Lack of education and ignorance of one's rights have traditionally been a substantial consideration on the part of this Court in assessing voluntariness. *Haley v. Ohio,* 332 U.S. 596; *Paine v. Arkansas,* 356 U.S. 560; *Bumper v. North Carolina,* 391 U.S. 543.

4. Agents are trained to discourage the free exercise of constitutional rights.

The Internal Revenue Service Audit Technique Handbook §10.90(2) requires that a Revenue agent

> immediately suspend his investigation, *without disclosing to the taxpayer or his representative the reason for his action,* when he discovers what he believes to be in indication of fraud. * * * *United States v. Lockyer,* 448 F.2d 417, n.2 (10th Cir.). (Emphasis added.)

Thus, the taxpayer has no way of knowing when the tax investigation has turned critical or criminal for prosecution purposes. At best when a special agent identifies himself as such, this has no effect upon the taxpayer in making him realize he is the subject of a criminal investigation.[18]

Revenue agents are trained to obviate the involvement of counsel. See "Internal Revenue Service Training No. 3158-01(5-73)" *CCH Federal Tax Reports* No. 29, June 6, 1973 §2.034 *"Initial Contact"*

> We strongly emphasized making the initial contact with the taxpayer, *not with his representative.* * * * (Emphasis added.)

Also see the same training manual for an illustration of how agents are trained in the necessity of obtaining incriminating statements.

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[18]See Duke, *supra*, p. 36.

> [V]irtually all [courts] hold that a special agent who merely identifies himself as a "special agent" or "from Intelligence" has given the taxpayer all the warning he deserves, despite the probability that not one taxpayer in twenty knows that this means a criminal investigation.

3.04 *"Cash on Hand at Beginning of Period"*

> It is important to get complete information about non-taxable income as your efforts may be wasted if a taxpayer later provides information regarding a non-taxable source of funds which explains the understatement. This is especially true of cash on hand or cash hoard. This information is a must in every indirect method. The best adjustment for unreported income will be lost if this item is not determined from the beginning. Once the taxpayer is faced with an understatement, he will try to explain it. He cannot use the defense of "cash in the mattress" if he has already furnished the amount.

This entire training manual seeks to foster a spirit of "getting the taxpayer to talk."[19] While these methods may serve to facilitate the collection of taxes, they are strikingly similar to the psychological, tongue-loosening devices mentioned in *Miranda v. Arizona,* which this Court sought to guard against in its holding in that case (384 U.S. 436, 448-455).

5. During an interview a taxpayer experiences justifiable social and economic fears which compel cooperation.

[T]he existence of the criminal sanction, the dread with which most taxpayers regard involvement in criminal proceedings, the vagueness of the crime, and the enormous discretion of the investigator,

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[19]For example, see §4.013, *Purpose of Interview,*

> [H]e should conduct himself to establish the confidence of the taxpayer as early in the examination as possible. Begin the discussion by commenting on the topic of apparent interest to the taxpayer. Display pleasant emotional responses and avoid unpleasant expressions. Do not immediately attempt to discuss involved technical matters but keep the conversation informal and easy. * * *

> make non-cooperation by an audited taxpayer in most cases an inordinately foolish decision. The civil aspects of an audit also point toward cooperation. The return of almost any taxpayer contains items upon which an obdurate agent can assert a deficiency which is both difficult and costly for the taxpayer to resist.[20] Non-cooperation may be very expensive. *Duke*, op. cit., page 35.

Also, the fact that the taxpayer is aware of the agent's ability to make inquiries among the taxpayer's friends, associates, clients and customers is a powerful inducement to cooperation. These inquiries are harmful, if not ruinness, to one's reputation.[21]

> [D]irect confrontations productive of such incriminating evidence are inherently "coercive" in the psychological sense. The agents personify the authority of the Federal Government, and the ordinary taxpayer does not have either the "technical knowledge" of his rights or the "toughness" of fiber"[22] to decline to answer their questions despite the fact that he may have been warned that anything he says may be used against him. The mere fact of such questioning will inevitably produce some "compulsions" on the mind of the taxpayer. Beyond that, manifold other factors may pressure

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[20]Over and above the expense and inconvenience an Agent can cause by demanding a full scale audit, he can cause the taxpayer to suffer an assessment for a deficiency. Upon such assessment it is the burden of the taxpayer to bring legal proceedings to prove the deficiency is being erroneously assessed. See 1954 *Internal Revenue Code* as amended 26 U.S.C. §§6212 and 6213.

[21]See "Hearings before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary" 1179-83; Duke, op. cit., n. 160 p. 35.

[22]United States v. Maius, 378 F.2d 716, 719 (6th Cir.) *cert. den.* 389 U.S. 905.

> the taxpayer into "cooperation," including the desire not to increase the agents' suspicions, the intent to appease the agent so that he will not assert the deficiency based upon otherwise proper deductions difficult to prove in court, and the all too common belief that if he cooperates he will be allowed to "pay up" the deficiency and thereby avoid the imposition of criminal sanctions. In addition, at the formal interrogation stage the coercive inducements to appear and give testimony increase. The letter of invitation impliedly threatens prosecution if the taxpayer does not appear and offers the hope of avoiding prosecution if he does appear. * * * All these factors combine to pressure the taxpayer to give verbal statements and turn over documentary evidence to agents at all stages of the criminal tax investigation. Surely, there are present, in reality, such psychological factors operating on the mind of the suspected tax evader as "to disable him from making a free and rational choice." Andrews, op. cit., pages 1112-1114.

6. The combined effect of all of the above.

At least one member of this Court has recognized the coercive effects of these interviews. In dissenting from the denial of *certiorari* in *Thomas v. United States*, 386 U.S. 975, Mr. Justice Douglas stated that he

> would grant this petition on the fourth question. It concerns the apparent practice of Internal Revenue agents in examining taxpayers and using the evidence obtained in criminal prosecutions when the taxpayers are given no warning as to their rights including the right to have an attorney present. This is not an in-custody case, but it is a *coercive* examination of a taxpayer at a *critical* preliminary hearing, so to speak, and the question presented apparently is a recurring one. (Emphasis added.)

While, as the United States emphasizes in its response to the petitioner for *certiorari* in this case, ten Circuits have held contrary to the Seventh Circuit on this issue, petitioner hastens to point out that nearly all of the scholars and law review commentators support petitioner's view. See Andrews, "The Right to Counsel in Criminal Tax Investigations under Escobedo and Miranda: The 'Critical Stage,' " 53 *Iowa Law Review* 1074; Duke, "Prosecutions for Attempts to Evade Income Tax: A Discordant View of a Procedural Hybrid," 76 *Yale L.J.* 1, 1966; Weiss, 25 *Journal of Taxation* 26, 1966; Lipton, "Constitutional Rights in Criminal Tax Investigations," 45 F.R.D. 293, 1968; Skees, 46 *Indiana L.J.* 361, 1971; Weinstein, "Constitutional Rights of a Taxpayer in Criminal Tax Investigations," 16 *J. Pub. Law* 403, 1967; Simmons, "The Shift of Emphasis Theory: Constitutional Rights of Taxpayers in Criminal Fraud Investigations in Light of *Miranda v. Arizona,*" 20 *Syracuse L.Rev.* 725 (1969); *Forrester,* "Constitutional Rights of the Taxpayer in a Tax Fraud Investigation," 42 *Tulane L.Rev.* 862 (1968); *Lay,* "Right to Counsel in Criminal Tax Investigations," 43 *Ind. L.J.*, 69 (1967).

The Seventh Circuit appreciates the psychological restraints arising from the above-noted factors. *United States v. Oliver, supra; United States v. Dickerson, supra.* See also, District Judge's Opinion in *United States v. Dickerson,* 291 F.Supp. 636, 637:

> "It would seem to us that the average citizen, faced with repeated questioning by two Government agents is in an ominous situation to say the least. The Government suggests that the defendant was in no way physically restrained, but we doubt that he really felt free to walk out on the investigators from the Internal Revenue Service. In the absence of sufficient warnings and the assistance of counsel,

> there are innumerable factors which act on the taxpayer's mind compelling him to 'co-operate' with the Federal authorities."

In the light of values the *Escobedo* and *Miranda* decisions sought to protect, the fact situation here dictates the requiring of full warnings much more so than the facts in *Mathis v. United States,* 391 U.S.1. *Escobedo* and *Miranda* sought to foster the free exercise of the constitutionally protected rights to counsel and to be free from compulsory self-incrimination. As the fact patterns in *Escobedo* and *Miranda* make clear, the specific concern of the court was to discourage "compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Miranda,* 384 U.S. at 436.

In *Mathis* the interview resulting in incriminating statements was conducted by a civil Revenue agent. At that time there existed no focus upon the taxpayer as a potential accused in a tax fraud prosecution and, thus, no motive for overbearing on the part of the agent. In addition, Mathis experienced no heightened compulsion due to his confinement. He was serving a state sentence in a Florida institution and was ostensibly familiar with the circumstances of his confinement. Since the interrogators there did not have control over his confinement the potential abuses listed in *Miranda* were minimized. Obviously, in the light of its holding, the *Mathis* court felt the circumstances potentially coercive; however, the *Miranda* opinion suggests concern with a restraint which was directly related to the questioning.[23]

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[23] "Accordingly, we hold that an individual held for interrogation must be clearly informed . . ." 384 U.S. at 471.

Here extreme Government focus and potential for zealous overbearing by the Government combined to create more intense pressures during the interview of petitioner. Already being incarcerated, Mathis did not have as much to lose as did petitioner from expense and embarrassment of a full-scale tax audit and financial inquiries among friends, customers and business associates.

C. The Investigative Procedure Here Used Is Violative of Due Process.

The investigative procedure actually used by special agents Peterson and Fornili in interviewing petitioner, one wholeheartedly approved by the IRS,[24] is one which is fundamentally unfair and which directly impinges the free exercise of substantive rights of potential criminal defendants in violation of the Fifth Amendment due process clause.

The *Miranda* and *Escobedo* cases set forth the "threshold" procedural requirements necessary to protect certain "basic rights that are enshrined in our Constitution," *Miranda, supra,* 384 U.S. 436 at 442, namely, the Fifth Amendment privilege against self-incrimination and the Sixth Amendment right to the assistance of counsel. The privilege against self-incrimination is "the essential mainstay of our adversary system" and requires that

> [T]he Government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth . . . In sum, the privilege is fulfilled only when the person is guaranteed the right "to remain silent unless he chooses to speak in the unfettered

[24]See IRS Training No. 3158-01 (5-73), op. cit.

> exercise of his own will." (Citations omitted.) *Miranda v. Arizona,* 384 U.S. 436, 460.

The Sixth Amendment right to counsel buttresses the privilege against self-incrimination. Counsel informs the accused whether certain statements will be self-incriminating, *Escobedo v. Illinois,* 378 U.S. 478, at pages 484-489, *Miranda v. Arizona,* 384 U.S. 436, at p. 466.

Miranda warnings are not a substitute for these substantive constitutional rights but are a prophylatic measure intended to protect individuals from governmental invasion of those rights under the Fifth Amendment due process clause. Due process is a flexible concept and "calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer,* 408 U.S. 471, 481.

The circumstances of the August 2, 1972, interview were such that the Government agents were required to give petitioner full *Miranda* warnings, since the investigative techniques employed directly affected the exercise of his substantive rights.

As noted, *supra,* at p. 25, criminal tax investigations like the one at issue differ significantly from ordinary criminal investigations primarily because the defendant himself supplies information, either by written or oral statement which must be characterized as self-incriminating because these statements are an essential element of the prosecution's net worth case. *Holland v. United States, supra.*

When technically skilled agents, hoping to derive incriminating statements in order to ease the obtaining of a conviction, approach a target taxpayer like petitioner, the confrontation achieves unfair proportions due to the mere complexity of the subject matter and civil obliga-

tions contained in the tax laws. At this point the need for the exercise of the right to silence is imperative and the assistance of counsel invaluable.[25]

The IRS recognizes the role counsel could play during these initial interviews and encourages agents to avoid dealing with "representatives" in favor of going directly to the taxpayer. IRS Training No. 3158-01 (5-73), §2.034 set forth in part, *supra* p. 26. These shortcuts are not constitutionally permissible despite the lawful governmental objective of capturing criminals for the "official's measure of his own need often does not square with the Bill of Rights." *Frank v. Maryland,* 359 U.S. 360, 382 (1958) (Douglas, J., dissenting).

The procedural safeguards of *Miranda* must attach at this point for the investigation is criminal in nature, thus higher standards of due process must be observed in light of the fundamental interests and rights of defendant involved. *Jenkins v. McKeithen,* 395 U.S. 411; *Donaldson v. United States,* 400 U.S. 517, 533.

Many recent cases have required the Government to give full *Miranda* warnings to grand jury witnesses where the Government had "one eye on the possible prosecution of defendants." *United States v. Mandujano,* 496 F.2d 1050 (5th Cir.); *United States v. Rangel,* 496 F.2d 1059 (5th Cir.); *United States v. Prior,* 381 F.Supp. 870 (H.D. Fla.); *United States v. Wong,* No. 74-1636 (Sept. 23, 1974, 9th Cir.) (petition for *certiorari* pending). In

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[25]There is necessarily a direct relationship between the importance of a stage to the police in their quest for a confession and the criticalness of that stage to the accused in his need for legal advice. Our Constitution, unlike some others, strikes the balance in favor of the right of the accused to be advised by his lawyer of his privilege against self-incrimination. Escobedo v. Illinois, 378 U.S. 478, 488.

those cases, the courts suppressed statements made to the grand jury and later used in perjury prosecutions because the Government failure to meaningfully advise "virtual defendants of their right to remain silent and to have the assistance of counsel was unfair and had the incidental effect of encouraging perjured testimony before the grand jury.

> We cannot ignore the obvious fact that, while few witnesses placed in such a position might honestly wish to confess, in the great majority of cases asking incriminating questions of a putative defendant, were the witness fully informed of his rights, would be an idle task, as the witness would simply remain silent. The utility of the procedure to the Government and its inherent unfairness and danger lie in the wholly predictable fact that the witness will be ignorant or not understand the right to remain silent and be compelled by answering to subject himself to criminal liability. *The Government should not engage in such a practice.* (Emphasis added.) *United States v. Rose Wong, supra,* Slip op. 4.

The focus here, as in all exclusionary rule cases, is not upon defendant's conduct but rather upon the Government's behavior. It is irrelevant whether petitioner answered questions voluntarily if the procedure whereby he was induced to answer was one calculated or having the effect of depriving him of the ability to exercise his constitutionally protected rights. Under the circumstances of this case, just as in the grand jury cases, Government failure to observe *Miranda* requirements creates a situation where a target defendant is encouraged to forego exercise of his rights primarily out of ignorance, thus giving the prosecution an unfair advantage at the expense of fundamental rights.

The truth-seeking function of the criminal system is impaired by special agents' failure to comply with *Miranda* in this case, in the same way the prosecutor's conduct did in the grand jury cases, because the agents' activity has the incidental effect of encouraging target defendants to make false or unreliable responses during interrogation.

> As the Supreme Court said about the hazards to the innocent in a case based upon statements of this sort, "When a revenue agent confronts the taxpayer with an apparent deficiency, the latter may be more concerned with a quick settlement than an honest search for the truth. Moreover, the prosecution may pick and choose from the taxpayer's statement, relying the favorable portion and throwing aside that which does not bolster its position." The statements are also of doubtful reliability because the taxpayer often does not know the facts. Few people can remember what their net worth was five or ten years before, except in the crudest sense. Unreliability is compounded by the fact that the taxpayer is seldom more than vaguely aware of the utility of the statement to the prosecution and cannot know its precise purpose.
>
> Duke, supra, 76 *Yale L.J.* 1, 17.

This kind of investigative technique "smacks" of entrapment. *United States v. Mandujano,* 496 F.2d 1050, 1055 (5th Cir.) citing with approval District Court opinion, 365 F.Supp. 155, at 496 F.2d 1050, 1053, and must not be counternanced by the courts.

Surely the Governmental interest in apprehending and punishing criminals cannot justify the impairment of individual liberty or the manipulation of the criminal justice system to achieve that result.

> We have also learned the companion lesson of history that no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights. No system worth preserving should have to *fear* that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights. If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system. *Escobedo v. Illinois,* 378 U.S. 478, 490.

D. The Warnings Accorded Petitioner Were Insufficient Under Miranda.

In this case, warnings given by the special agent are set forth in the first page of the agent's Memorandum of Interview. (R. 7, p. 15.) (App. 65-66)[26] These warnings clearly fall far short of Constitutional requirements.[27]

1. Right to remain silent.

Miranda said that a warning as to the right to remain silent and that anything stated can be used against a defendant is "an *absolute prerequisite* to interrogation." *Miranda, supra,* 384 U.S. 436, 471. In this case,

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[26]Also see (Pet. App. 46) for a contrast of the advice to petitioner and the warnings held to comply with *Miranda* by the District of Columbia Circuit.

[27]The IRS itself recognizes that the warnings given by a special agent during an interview do not comply with *Miranda.* Instructions issued to IRS special agents provide for full *Miranda* warnings only when the person is taken into custody or placed under arrest. See IRS Press Release issued October 3, 1967, CCH 67-2, Par. 9489 N.9. (R. 9, p. 19.) and News Release of Nov. 26, 1968 (App. 67-68).

the petitioner was told by the special agent: "Under the Fifth Amendment . . . I cannot compel you to answer any questions . . . if such answers or information might tend to incriminate you in any way." This simply is not the law, and is certainly an inadequate warning of the petitioner's right to total silence. We submit this inadequacy is further multiplied in tax cases. As noted *supra*, p. 24, because of the complexity of the tax law, what seemed to petitioner the most innocuous of remarks earned him five (5) years in the penitentiary and a $10,000.00 fine.

The Courts, following *Miranda*, have guarded closely this portion of the *Miranda* warnings. In *United States v. Mullings*, 364 F.2d 173 (2d Cir.), the Court found inadequate the warning "that he had a Constitutional right not to answer . . . any questions if he felt that the answers to those questions would in any way incriminate him,"[28] recognizing the misleading nature of this advice. In *United States v. Fox*, 403 F.2d 97 (2d Cir.) the defendant was told that he did not have to make a statement, which the Court found to have been an inadequate warning of his right to remain silent. We submit the same ruling should be made in this case.

2. Right to Have an attorney present during interrogation.

Similarly, with respect to the right to remain silent, this Court held that as an "absolute prerequisite to interrogation" the person must be told of the "right to consult with a lawyer and to have the lawyer with him during interrogation." *Miranda, supra*, 384 U.S. at 471. In this case the petitioner was told by the special agent,

[28] *Mullings, supra*, 364 F.2d at 175.

"I advise you further that you may, if you wish, seek assistance of an attorney before responding." Clearly this warning does not inform the petitioner of his right to the presence of an attorney during interrogation. (App. 66)

In *Windsor v. United States*, 389 F.2d 530 (5th Cir.), the Court held that merely telling a defendant that he could speak with an attorney or anyone else before he said anything was insufficient to meet *Miranda's* requirements. See also, *Montoya v. United States*, 392 F.2d 731 (5th Cir.); *United States v. Fox, supra.*

3. Right to an appointed attorney.

Miranda, holds that the person must be advised that "if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *Miranda, supra*, 384 U.S. at 479. The advice which the defendant received, as stated in paragraph 2 above, did not inform him of his right to court-appointed counsel.

In *Green v. United States*, 411 F.2d 588 (10th Cir.), the defendant was questioned but was not advised that if he could not afford an attorney, one would be appointed. The Court said, "Such a warning now appears to be a necessary inclusion." *Green, supra*, 411 F.2d at 589. See also, *United States v. Miller*, 261 F.Supp. 442 (D. Del.) where the defendant's statements were suppressed where he had been questioned by FBI agents who had warned him of all his rights except for his right to court-appointed counsel. As noted heretofore, p. 11, *Michigan v. Tucker, supra*, is not to the contrary. In fact, that case was considered on the assumption that full *Miranda* warnings had not been given due to failure to include the right to a court-appointed attorney. Thus, the case serves to emphasize the inadequacy of the warnings given here.

4. Right not to produce documents.

As stated in paragraph D1 above, the defendant was told "I cannot compel you to . . . submit any information if such . . . information might tend to incriminate you in any way." The defendant was not told that he could refuse to produce any books and records.

Most taxpayers, unfamiliar with tax laws, assume that they can be compelled to submit to IRS agents their books and records. Indeed, lawyers and some judges also share the popular misconception that tax records must be produced. Compare *Stern v. Robinson,* 262 F.Supp. 13 (W.D. Tenn.), *appeal dismissed,* 391 F.2d 601 (6th Cir.) with *Schmedber v. California,* 384 U.S. 757, 763-764.

E. There Exists a Minimal Burden of Corrective Action.

Since some attempt was made to provide petitioner with warnings, this Court might wish to weigh what burden would be placed upon the Government in the event petitioner's arguments here are to be accepted.

Petitioner requests only that full *Miranda* warnings be given when the "second stage" of a tax investigation is reached, i.e., when "special agents" of the "intelligence division" who are exclusively concerned with criminal activity interview a taxpayer.

This might entail the reprinting of warning cards for the special agents. The IRS warnings appear to be revised from time to time already[29] and the minuscule cost of printing such warnings is one that appears to have been

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[29]Apparently, the IRS has the full *Miranda* warnings which are to be given when the taxpayer is physically taken into custody (App. 67-68).

successfully borne by every other law enforcement agency, state and federal, no matter how small or how remote.

The only other possible burdens accruing to the Government from full warnings would be slowed or stinted criminal prosecutions stemming from the fact that taxpayers sought to exercise their rights. This Court and the Circuit Court below long ago made the decision that such burdens did not outweigh the fostering of the exercise of constitutional rights even where the continued freedom of murderers (*Killough v. United States,* 114 U.S.App. D.C. 305, 315 F.2d 241, *Escobedo v. Illinois, supra*) and of rapists (*Mallory v. United States,* 354 U.S. 449, *Miranda v. Arizona, supra*) was at stake. No logical reason appears why our Government cannot afford this burden in a case when it is allegedly owed $8,348.51 by an accused.

Only one explanation exists for the continued existence of the present watered-down warnings now given. The Internal Revenue Service fears that taxpayers will exercise their constitutinally guaranteed rights to counsel and to be free from self-incrimination.

CONCLUSION

WHEREFORE, it is submitted that the judgment of the Court of Appeals for the District of Columbia Circuit should be reversed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1975

ALVIN A. BECKWITH, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Constitutional provision involved	2
Statement	2
Introduction and summary of argument	7
Argument:	
Statements made by a taxpayer to an Internal Revenue Service agent during the course of a non-custodial interview in a criminal tax investigation are admissible in evidence against the taxpayer even though he was not given the warnings required by *Miranda* v. *Arizona* in connection with custodial interrogation	11
A. The requirement that any warning of rights be given applies only to custodial interrogations	11
B. A special agent's non-custodial interview of a taxpayer is not so inherently coercive as to require the agent to warn the taxpayer of his constitutional rights	21
C. If some form of warning to a taxpayer under investigation is required at his initial interview by a special agent, the agents' warning in this case was sufficient to insure that petitioner's statements were voluntary	31
Conclusion	36

594-918—75——1

CITATIONS

Cases:

	Page
Agoranos v. *United States*, 409 F.2d 833, certiorari denied, 396 U.S. 824	16
Brown v. *Mississippi*, 297 U.S. 278	12
Chambers v. *Florida*, 309 U.S. 227	12
Cohen v. *United States*, 405 F.2d 34, certiorari denied, 394 U.S. 943	17, 23
Counselman v. *Hitchcock*, 142 U.S. 547	7
Escobedo v. *Illinois*, 378 U.S. 478	8, 19
Feichtmeir v. *United States*, 389 F.2d 498	17
Frohmann v. *United States*, 380 F.2d 832, certiorari denied, 389 U.S. 976	17
Gault, In re, 387 U.S. 1	7
Haynes v. *Washington*, 373 U.S. 503	12
Hensley v. *United States*, 406 F.2d 481	16
Hoffa v. *United States*, 385 U.S. 293	29, 30
Kirby v. *Illinois*, 406 U.S. 682	20, 33
Kohatsu v. *United States*, 351 F.2d 898, certiorari denied, 384 U.S. 1011	15, 17
Lowe v. *United States*, 407 F.2d 1391	20
Malloy v. *Hogan*, 378 U.S. 1	7
Marcus v. *United States*, 422 F.2d 752	16
Mathis v. *United States*, 391 U.S. 1	14, 15, 24, 29, 34
McCarthy v. *Arndstein*, 266 U.S. 34	7
Michigan v. *Tucker*, 417 U.S. 433	9, 11, 19
Miranda v. *Arizona*, 384 U.S. 436	5, 6, 7, 8, 12, 13, 18, 20, 22, 29, 31
Morgan v. *United States*, 377 F.2d 507	16, 24
Muse v. *United States*, 405 F.2d 40, certiorari denied, 393 U.S. 1117	17
Orozco v. *Texas*, 394 U.S. 324	13, 29
Payne v. *Arkansas*, 356 U.S. 560	12

Cases—Continued

	Page
Ping v. *United States*, 407 F.2d 157, certiorari denied, 395 U.S. 926	17
Rickey v. *United States*, 360 F.2d 32, certiorari denied, 385 U.S. 835	17
Rogers v. *Richmond*, 365 U.S. 534	27
Schlinsky v. *United States*, 379 F.2d 735, certiorari denied, 389 U.S. 920	16, 25
Schneckloth v. *Bustamonte*, 412 U.S. 218	15, 26
Selinger v. *Bigler*, 377 F.2d 542, certiorari denied, 389 U.S. 904	17
Shotwell Mfg. Co. v. *United States*, 371 U.S. 341	27
Simon v. *United States*, 421 F.2d 667, certiorari denied, 398 U.S. 904	17
Spahr v. *United States*, 409 F.2d 1303, certiorari denied, 396 U.S. 840	16
Spinney v. *United States*, 385 F.2d 908, certiorari denied, 390 U.S. 921	16
Taglianetti v. *United States*, 398 F.2d 558, affirmed, 394 U.S. 316	16
Thomas v. *United States*, 370 F.2d 96, certiorari denied, 386 U.S. 975	15
United States v. *Bagdasian*, 398 F.2d 971	16
United States v. *Bettenhausen*, 499 F.2d 1223	17
United States v. *Brevik*, 422 F.2d 449, certiorari denied, 398 U.S. 943	17
United States v. *Browney*, 421 F.2d 48	16
United States v. *Caiello*, 420 F.2d 471, certiorari denied, 397 U.S. 1039	16, 22
United States v. *Carter*, 462 F.2d 1252, certiorari denied, 409 U.S. 984	16
United States v. *Chikata*, 427 F.2d 385	17
United States v. *Dawson*, 400 F.2d 194, certiorari denied, 393 U.S. 1023	16

Cases—Continued

	Page
United States v. *Dickerson*, 413 F.2d 1111	28, 29
United States v. *Ehmig*, 488 F.2d 1074	16
United States v. *Engle*, 458 F.2d 1017, certiorari denied, 409 U.S. 875	16
United States v. *Fukushima*, 373 F. Supp. 212	35
United States v. *Hall*, 421 F.2d 450, certiorari denied, 397 U.S. 990	18, 20
United States v. *Heffner*, 420 F.2d 809	35
United States v. *Hiken*, 458 F.2d 24, certiorari denied, 409, U.S. 842	16
United States v. *Jaskiewicz*, 433 F.2d 415, certiorari denied, 400 U.S. 1021	16, 25
United States v. *Jernigan*, 411 F.2d 471, certiorari denied, 396 U.S. 927	16
United States v. *Leahey*, 434 F.2d 7	35
United States v. *Leonard*, C.A. 2, No. 75–1153, decided August 28, 1975	35
United States v. *Mackiewicz*, 401 F.2d 219, certiorari denied, 393 U.S. 923	16, 24
United States v. *MacLeod*, 436 F.2d 947, certiorari denied, 402 U.S. 907	17
United States v. *Maius*, 378 F.2d 716, certiorari denied, 389 U.S. 905	16
United States v. *Mancuso*, 378 F.2d 612	16
United States v. *Mandujano*, 496 F.2d 1050, certiorari granted, 420 U.S. 989	20
United States v. *Marcus*, 401 F.2d 563	16
United States v. *Miriani*, 422 F.2d 150, certiorari denied, 399 U.S. 910	16
United States v. *Moore*, 485 F.2d 1165	19
United States v. *Nemetz*, 450 F.2d 924, certiorari denied, 405 U.S. 988	16
United States v. *Oliver*, 505 F.2d 301	30

Cases—Continued

	Page
United States v. *Prudden*, 424 F.2d 1021, certiorari denied, 400 U.S. 831	16, 24
United States v. *Ramantanin*, 452 F.2d 670	16
United States v. *Scully*, 415 F.2d 680	15
United States v. *Shlom*, 420 F.2d 263	16
United States v. *Sourapas*, 515 F.2d 295	3
United States v. *Squeri*, 398 F.2d 785	16, 20
United States v. *Stribling*, 437 F.2d 765, certiorari denied, 402 U.S. 973	16, 19
United States v. *Tonahill*, 402 F.2d 1042	16
United States v. *Webb*, 398 F.2d 553	15
United States v. *White*, 417 F.2d 89	16
Watkins v. *United States*, 354 U.S. 178	7
White v. *Texas*, 310 U.S. 530	12
Constitution and statutes:	
Constitution of the United States:	
Fifth Amendment	2, 7, 10, 18
Sixth Amendment	33
Internal Revenue Code of 1954, as amended (26 U.S.C.):	
Section 6001	23
Section 7201	5
Section 7602	32
Section 7604	32
Section 7608(b)	14
18 U.S.C. 3006A(a)	33
Miscellaneous:	
Annual Report of the Commissioner of Internal Revenue 17 (1972)	24
Internal Revenue Service News Release IR–949 (1968 C.C.H. Stand. Fed Tax Reptr., par. 6946)	3

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74–1243

ALVIN A. BECKWITH, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The oral opinion of the district court denying petitioner's motion to suppress evidence (Pet. App. B) is not reported. The opinion of the court of appeals (Pet. App. A) is reported at 510 F.2d 741.

JURISDICTION

The judgment of the court of appeals was entered on January 22, 1975, and a petition for rehearing *en banc* was denied March 3, 1975. The petition for a writ of certiorari was filed on April 2, 1975, and was granted on June 16, 1975. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a special agent of the Internal Revenue Service investigating possible criminal tax violations must, prior to interviewing a taxpayer who is not in custody, give him in the warnings of rights required by *Miranda* v. *Arizona* for arrested suspects prior to custodial interrogation.

CONSTITUTIONAL PROVISION INVOLVED

The pertinent portion of the Fifth Amendment to the United States Constitution provides:

> No person * * * shall be compelled in any criminal case to be a witness against himself * * *.

STATEMENT

On August 2, 1972, Special Agents Peterson and Fornili [1] of the Intelligence Division of the Internal Revenue Service called on petitioner, who was staying at the home of a friend. Their visit was prompted by the receipt of information by the Internal Revenue Service from a confidential source that petitioner had failed to report all of his income on his federal tax return (Pet. App. A 2a; A. 9, 13, 30, 45).

The agents identified themselves to the person who answered the door and stated that they wished to speak with petitioner about his taxes. They were

[1] The case had been assigned to Special Agent Peterson (A. 9). However, Special Agent Fornili accompanied Peterson in order to comply with the policy of the Intelligence Division that a special agent interview a taxpayer only in the presence of another special agent (A. 13–14).

then admitted to the house. Shortly thereafter, petitioner came downstairs to meet the agents. After the agents identified themselves and explained the purposes of their visit, petitioner told them he would like to finish dressing, if they did not "mind." The agents replied that the delay would be "fine." Petitioner thereupon went back upstairs for about five minutes and then returned (A. 14–15).

At the outset of the interview, both agents presented their credentials to petitioner. Peterson advised petitioner that he was a special agent of the Intelligence Division of the Internal Revenue Service and that one of his functions was to investigate the possibility of criminal tax fraud. He also stated that he had been assigned to investigate petitioner's federal income tax liability for the years 1966 through 1971 (A. 15, 30–31, 60, 65). Peterson then advised petitioner of his constitutional rights by reading from a card as follows (A. 16, 65–66): [2]

> Under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you

[2] The card set forth the warnings (A. 67) that the Internal Revenue Service requires a special agent to give at his initial meeting with the taxpayer. See Internal Revenue Service News Release IR-949 (1968 C.C.H. Stand. Fed. Tax Reptr., par. 6946).

394-918—75——2

wish, seek the assistance of an attorney before responding.

Special Agent Peterson thereupon gave the card to petitioner for him to read aloud and asked him if he understood his rights. Petitioner replied that he was aware of his rights and that he knew he did not have to talk to the agents (A. 18, 21, 32). The agents then proceeded to interview petitioner with regard to his income tax liability. During the interview, petitioner's friend was present in her house (A. 37–38). The atmosphere of the interview was relatively friendly (A. 42, 47–48). Petitioner was never in custody during the interview, nor was anything said or done that might lead him to believe that he could not leave whenever he wanted (A. 33). The agents had no intention of detaining petitioner for any purpose (A. 37). Petitioner never asked that the interview be terminated (Tr. 84),[3] nor did he ever ask to see a lawyer or to have one present (A. 32, 33; Tr. 84). Petitioner testified that at no time during the interview did he conclude that having a lawyer present might be to his interest (A. 58). The interview lasted three hours (A. 22.)

During the course of the interview there were several questions that petitioner either did not want to or could not answer. The agents did not press him for answers to these questions (A. 59–60). Petitioner never told the agents that he did not want to answer any more questions, and the agents would have left had petitioner asked them to do so (A. 33, 60). Near the end of the interview, the agents asked petitioner whether the answers he

[3] "Tr." refers to the trial transcript.

had given were of his own volition or whether there had been any threats or duress. Petitioner replied that his answers were freely given (Tr. 85).

After the interview, the agents and petitioner left the house and went (separately) to petitioner's liquor store, where he kept some of his records. Agent Peterson had asked petitioner whether he would be willing to furnish his records and advised him that he had the right not to produce them. Petitioner thereupon furnished the agents with certain of his records (A. 25). After spending ten or fifteen minutes at petitioner's store, the agents departed (A. 27).

Subsequently, petitioner was indicted on two counts of willfully attempting to evade and defeat income tax for the years 1970 and 1971, in violation of 26 U.S.C. 7201. The indictment alleged that petitioner understated his true income and tax liability on his returns for those years (A. 5–6). Petitioner thereupon filed a motion to suppress evidence, alleging that he had made certain critical admissions at his interview with the agents of the Internal Revenue Service and that they had failed to warn him of his constitutional rights in accordance with *Miranda* v. *Arizona*, 384 U.S. 436 (A. 2).

After a full hearing at which Agents Peterson and Fornili and petitioner testified (A. 7–64), the district court denied petitioner's motion to suppress in an oral opinion (Pet. App. B 1b–2b). In the district court's view, *Miranda* warnings are only required when "there [are] custodial circumstances," and the court found that "there [was] no evidence whatsoever of any such situation." The court characterized the set-

ting of the agents' interview of petitioner as nothing more than one in which the agents stated to petitioner that "we are IRS agents, sit down, we would like to ask you some questions." The district court further found that petitioner "knew he could have a lawyer and he knew that he didn't have to say anything to [the agents] about it if he didn't want to" (*ibid.*).

Petitioner thereafter waived his right to a jury trial. He offered no defense to the stipulated facts (A. 70–72) and was convicted on one count of tax evasion.[4] The government's case was premised on the net worth plus nondeductible expenditures method of determining income. The evidence showed that while petitioner's reported taxable income for 1971 was $10,821.78, his true taxable income for that year was $24,637.02 (A. 71–72). The district court sentenced petitioner to five years' imprisonment and imposed a $10,000 fine plus court costs (A. 73).

The court of appeals affirmed (Pet. App. A 1a–5a). It held (Pet. App. A 3a) that the proper test under *Miranda* is whether the suspect "has been taken into custody or otherwise deprived of his freedom in any significant way" (384 U.S. at 477). Since petitioner was neither arrested nor detained against his will, was free to leave at any time, was not subjected to any coercive interrogation techniques, and was not misled by the agents, the court of appeals concluded that "it cannot be seriously argued that [petitioner]

[4] The district court dismissed the first count of the indictment, relating to the year 1970 (A. 73).

was 'compelled' to answer any questions" (Pet. App. A 3a–4a).

INTRODUCTION AND SUMMARY OF ARGUMENT

The Self-Incrimination Clause of the Fifth Amendment to the Constitution provides that "[n]o person * * * shall be compelled in any criminal case to be a witness against himself * * *." Despite its literal language, the privilege has long been construed to extend to proceedings other than criminal trials.[5] Nine years ago, in *Miranda* v. *Arizona*, 384 U.S. 436, this Court held for the first time that the self-incrimination privilege is applicable to police station interrogations, so that the defendant's statements in such circumstances might be excluded at trial unless steps were taken to insure that the statements were freely made. As the Court summarized its holding in *Miranda*: "[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination" (384 U.S. at 444).

Miranda did not hold that all incriminating statements made to law enforcement authorities are involuntary in the absence of the use of procedural safeguards prescribed by the Court. To the contrary, it

[5] See, *e.g.*, *Counselman* v. *Hitchcock*, 142 U.S. 547; *McCarthy* v. *Arndstein*, 266 U.S. 34; *Watkins* v. *United States*, 354 U.S. 178; *Malloy* v. *Hogan*, 378 U.S. 1; *In re Gault*, 387 U.S. 1.

limited its decision to "custodial interrogations" by law enforcement authorities. Moreover, *Miranda* did not leave the definition of that critical element of the decision to the lower courts, but took care to define that term itself. The Court stated: "By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way" (384 U.S. at 444). By way of footnote, the Court further explained that "[t]his is what [was] meant in *Escobedo* [v. *Illinois,* 378 U.S. 478] when [the Court] spoke of an investigation which had focused on an accused" (384 U.S. at 444, n. 4).

To implement its holding in *Miranda,* the Court outlined a series of recommended "procedural safeguards" to assure that the defendant's privilege against self-incrimination is protected. These specific guidelines, commonly known as *Miranda* rules, provide as follows (384 U.S. at 444):

> Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.

In adopting these procedural safeguards, the Court recognized that the warnings were not themselves rights protected by the Constitution but were rather measures designed as a practical reinforcement for the right against compulsory self-incrimination. As the Court observed: "[W]e cannot say that the Constitution necessarily requires adherence to any particular solution for the inherent compulsions of the

interrogation process as it is presently conducted" (*id.* at 467). See also *Michigan* v. *Tucker,* 417 U.S. 433, 443–444.

The question presented in this case is whether a special agent of the Internal Revenue Service, prior to his initial interview of a taxpayer under investigation, is required to give *Miranda* warnings although the taxpayer has not been taken into custody or otherwise deprived of his freedom. Here, such special agents, whose function is to investigate possible criminal violations of the internal revenue laws, interviewed petitioner at the home of his friend in what was indisputably a noncustodial setting. At the outset of the interview, they advised petitioner of their mission and warned him of his right not to answer their questions, of his right to consult counsel, and of the fact that his answers might be used against him in a criminal proceeding. Despite these admonitions by the agents, petitioner made statements during the interview that subsequently proved to be incriminating. Petitioner now seeks to suppress the evidentiary use of his statements at that interview solely on the ground that the agents did not give him the full *Miranda* warnings prescribed for persons in custody.

1. The decision below correctly held, as have nine other circuits, that the agents' failure to warn petitioner of his rights in accordance with *Miranda* did not justify the suppression of his statements. As this Court has made clear, the rule announced in *Miranda* reaches only custodial interrogations and does not

govern interviews by law enforcement officers in which the subject is not detained against his will.

2. Moreover, the *Miranda* rationale—that custodial interrogations are inherently coercive—has no application to the typical non-custodial interview conducted by a special agent, of which this case is representative. Those interviews are not in fact impermissibly coercive and are not conducted in the kinds of environments or under the kinds of circumstances that would justify prophylactic measures like those prescribed in *Miranda* to counter the potentially coercive atmosphere found to be inherent in incommunicado custodial questioning.

While some taxpayers may for various reasons feel impelled to cooperate with tax investigations, the harsh measure of exclusion of their statements from a subsequent judicial proceeding is inappropriate unless the statements were the product of coercion exercised by the government agents, which was clearly not the case here.

3. If some form of warning to a taxpayer under investigation is required at his initial interview by a special agent, the agents' warning in this case was sufficient to insure that petitioner's statements were voluntary. The warning employed by the special agents in this case substantially conforms to the *Miranda* formula. While the warning did not advise of an absolute right to silence, it did fully apprise petitioner of his rights under the Fifth Amendment privilege against compelled self-incrimination. As for

the right to counsel, since it does not attach at the time of a preliminary interview by a special agent, there is no basis for requiring the agents to warn the taxpayer in accordance with *Miranda* that he is entitled to appointed counsel. In fact, it is hardly unreasonable to assume that a person under investigation for criminal tax violations is ordinarily able to afford the services of an attorney.

ARGUMENT

STATEMENTS MADE BY A TAXPAYER TO AN INTERNAL REVENUE SERVICE AGENT DURING THE COURSE OF A NON-CUSTODIAL INTERVIEW IN A CRIMINAL TAX INVESTIGATION ARE ADMISSIBLE IN EVIDENCE AGAINST THE TAXPAYER EVEN THOUGH HE WAS NOT GIVEN THE WARNINGS REQUIRED BY *MIRANDA* V. *ARIZONA* IN CONNECTION WITH CUSTODIAL INTERROGATION

A. THE REQUIREMENT THAT ANY WARNING OF RIGHTS BE GIVEN APPLIES ONLY TO CUSTODIAL INTERROGATIONS

1. In *Michigan* v. *Tucker, supra,* 417 U.S. at 448, this Court reaffirmed that "[c]ases which involve the Self-Incrimination Clause must, by definition, involve an element of coercion, since the clause provides only that a person shall not be *compelled* to give evidence against himself" (emphasis in original). As a general matter, the existence of coercion is a factual question. Thus, prior to *Miranda,* when faced with a claim that law enforcement officers coerced incriminating statements from a person in custody, the Court would examine the particular circumstances of the interrogation in order to determine whether the process was so unfair as to render involuntary any statement made to

524-918—75——3

the officers.[6] However, *Miranda* announced a new prophylactic rule that did not depend on a finding of actual involuntariness: police officers must give adequate warnings of constitutional rights to remain silent and to consult with a lawyer prior to any custodial questioning of a person suspected of a crime, otherwise statements made in response to custodial interrogation would be inadmissible at a subsequent criminal trial. This holding was predicated on the Court's conclusion that "the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely" (384 U.S. at 467).

In *Miranda,* the Court based its conclusion that custodial interrogations were inherently coercive upon an examination of police practices that were then widely in use. It noted that, under these practices, a suspect "was thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures" designed "to subjugate the individual to the will of his examiner" (384 U.S. at 457). Referring to various police manuals and texts that set forth suggested interrogation techniques, the Court observed that "the modern practice of in-custody interrogation is psychologically rather than physically oriented" (*id.* at 448). These manuals emphasized incommuni-

[6] See, *e.g.*, *Brown* v. *Mississippi*, 297 U.S. 278; *Chambers* v. *Florida*, 309 U.S. 227; *White* v. *Texas*, 310 U.S. 530; *Payne* v. *Arkansas*, 356 U.S. 560; *Haynes* v. *Washington*, 373 U.S. 503.

cado interrogation in an oppressive police-dominated atmosphere, deceptive strategems and trickery, and constant questioning in order to undermine the will of the subject to resist.[7] Under these circumstances, which the Court found to be typical of police procedures, "the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals" (*id.* at 455).

None of the considerations that led the Court in *Miranda* to require warnings of constitutional rights in the circumstances there presented are applicable to the typical interview conducted by a special agent of the Internal Revenue Service. Although the Court has indicated that "custodial interrogations" may occur outside of a "police station," indicia of custody remain of critical importance to the inquiry, particularly whether the interrogee was under arrest and not free to leave. See *Orozco* v. *Texas,* 394 U.S. 324, 327.[8] The facts of the instant case—a typical criminal tax investigation—demonstrate that such interviews are not held under custodial conditions;

[7] The interrogation techniques discussed in *Miranda* also included confrontation of the suspect with his guilt as a fact, the offer to the suspect of legal excuses for his actions in order to induce an initial admission of guilt, and a show of some hostility. See 384 U.S. at 450–452.

[8] In *Orozco*, the Court applied *Miranda* to exclude incriminating evidence obtained by four police officers who held the suspect alone in custody in his own room in a boarding house and questioned him. Under those circumstances, the suspect was held to have been deprived of his freedom in a significant way. However, the Court's opinion states: "We do not, as the dissent implies, expand or extend to the slightest extent our *Miranda* decision" See 384 U.S. at 450–452.

the agents neither physically restrain nor detain the interviewee against his will.[9] Here, the agents testified without contradiction that they would have permitted petitioner to leave the house or terminate the interview (A. 33, 60). Thus, the inherent pressures upon a person taken into custody, which *Miranda* concluded could compel him to speak when he would not otherwise do so freely, are absent in this case. As the court of appeals correctly observed (Pet. App. A 2a–3a), petitioner "does not and could not reasonably assert that his interrogation was in custodial circumstances."

The significance of actual custody as a prerequisite for the application of *Miranda* to a federal tax investigation was subsequently reinforced by the Court's decision in *Mathis* v. *United States*, 391 U.S. 1. There, while the taxpayer was incarcerated in a state prison, an ordinary revenue agent questioned him in a "routine tax investigation." However, the agent did not warn the taxpayer of his right to remain silent and to consult with counsel. During the ensuing interview, the agent elicited oral statements and documents from the taxpayer on the basis of which he was subsequently convicted for filing false income tax refund claims. In reversing the conviction, the Court rejected the argument that *Miranda* was applicable only to questioning

[9] Special agents are empowered to arrest persons. See Section 7608(b)(2)(B) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 7608(b)(2)(B)). Upon an arrest, the agents are instructed to give the warnings prescribed by *Miranda* prior to any questioning. Here, petitioner was arrested in June 1973, ten months after the interview in question (A. 39).

of a person who is "in custody" in connection with the very case under investigation. It concluded that the term "custody" in its *Miranda* opinion was "clear and unequivocal" (391 U.S. at 5) and was intended to encompass any case where an individual is formally held by the authorities or deprived of his freedom for whatever reason.

The Court's emphasis upon the taxpayer's custodial situation strongly suggests that the converse, and equally important, teaching of *Mathis* is that if an individual is questioned by an Internal Revenue agent in a non-custodial setting where the individual is free to leave, the agent is not required to give the prescribed *Miranda* warnings. As the Court recently observed in *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 247, *"Miranda*, of course, did not reach investigative questioning of a person not in custody * * *."[10] See also *United States* v. *Scully*, 415 F. 2d 680, 684 (C.A. 2); *United States* v. *Webb*, 398 F. 2d 553 (C.A. 4).

Indeed, in light of these considerations, ten of the eleven courts of appeals (including the court below) have consistently rejected efforts to obtain suppression of admissions made by taxpayers in the course of non-custodial interviews. Four circuits have held that no warnings of any kind are necessary, in the

[10] One member of this Court appears to have already indicated his view that *Miranda* has no application to a non-custodial interview by a special agent. See *Kohatsu* v. *United States*, 351 F.2d 898 (C.A. 9), certiorari denied, 384 U.S. 1011 (statement of Douglas, J.). Compare, however, *Thomas* v. *United States*, 370 F.2d 96 (C.A. 5), certiorari denied, 386 U.S. 975 (statement of Douglas, J., indicating the importance of the question).

context of cases in which the taxpayer did not receive a warning of the kind given petitioner in this case;[11] every court of appeals except the Seventh Circuit has sustained admissibility in the context of cases in which some kind of warning was given."[12]

[11] See *United States* v. *Caiello*, 420 F. 2d 471 (C.A. 2), certiorari denied, 397 U.S. 1039; *United States* v. *Shlom*, 420 F. 2d 263 (C.A. 2) (dictum); *United States* v. *Prudden*, 424 F. 2d 1021 (C.A. 5), certiorari denied, 400 U.S. 831; *Spahr* v. *United States*, 409 F. 2d 1303 (C.A. 9), certiorari denied, 396 U.S. 840; *Hensley* v. *United States*, 406 F. 2d 481 (C.A. 10).

[12] First Circuit: *Taglianetti* v. *United States*, 398 F.2d 558, affirmed, 394 U.S. 316; *Spinney* v. *United States*, 385 F.2d 908, certiorari denied, 390 U.S. 921; *Morgan* v. *United States*, 377 F.2d 507; *Schlinsky* v. *United States*, 379 F.2d 735, certiorari denied, 389 U.S. 920.

Second Circuit: *United States* v. *White*, 417 F.2d 89; *United States* v. *Marcus*, 401 F.2d 563; *United States* v. *Mackiewicz*, 401 F.2d 219, certiorari denied, 393 U.S. 923; *United States* v. *Dawson*, 400 F.2d 194, certiorari denied, 393 U.S. 1023; *United States* v. *Squeri*, 398 F.2d 785.

Third Circuit: *United States* v. *Nemetz*, 450 F.2d 924, certiorari denied, 405 U.S. 988; *United States* v. *Jaskiewicz*, 433 F.2d 415, certiorari denied, 400 U.S. 1021.

Fourth Circuit: *United States* v. *Ramantanin*, 452 F.2d 670; *United States* v. *Browney*, 421 F.2d 48; *United States* v. *Bagdasian*, 398 F.2d 971; *United States* v. *Mancuso*, 378 F.2d 612.

Fifth Circuit: *United States* v. *Ehmig*, 488 F.2d 1074; *United States* v. *Prudden*, 424 F.2d 1021, certiorari denied, 400 U.S. 831; *Marcus* v. *United States*, 422 F.2d 752; *United States* v. *Jernigan*, 411 F.2d 471, certiorari denied, 396 U.S. 927; *Agoranos* v. *United States*, 409 F.2d 833, certiorari denied, 396 U.S. 824; *United States* v. *Tonahill*, 430 F.2d 1042.

Sixth Circuit: *United States* v. *Carter*, 462 F.2d 1252, 1256, certiorari denied, 409 U.S. 984; *United States* v. *Stribling*, 437 F.2d 765, certiorari denied, 402 U.S. 973; *United States* v. *Miriani*, 422 F.2d 150, 153–154, certiorari denied, 399 U.S. 910; *United States* v. *Maius*, 378 F.2d 716, certiorari denied, 389 U.S. 905.

Eighth Circuit: *United States* v. *Engle*, 458 F.2d 1017, certiorari denied, 409 U.S. 875; *United States* v. *Hiken*, 458 F.2d 24, certiorari denied, 409 U.S. 842; *United States* v. *MacLeod*, 436 F.2d 947, certiorari denied, 402 U.S. 907; *United States* v. *Brevik*, 422 F.2d 449, certiorari denied, 398 U.S. 943; *Ping* v. *United States*, 407 F.2d 157, certiorari denied, 395 U.S. 926; *Cohen* v. *United States*, 405 F.2d 34, certiorari denied, 394 U.S. 943; *Muse* v. *United States*, 405 F.2d 40, certiorari denied, 393 U.S. 1117; *Frohmann* v. *United States*, 380 F.2d 832, certiorari denied, 389 U.S. 976.

Ninth Circuit: *United States* v. *Chikata*, 427 F.2d 385; *Simon* v. *United States*, 421 F.2d 667, certiorari denied, 398 U.S. 904; *Feichtmeir* v. *United States*, 389 F.2d 498; *Selinger* v. *Bigler*, 377 F.2d 542, certiorari denied, 389 U.S. 904; *Rickey* v. *United States*, 360 F.2d 32, certiorari denied, 385 U.S. 835; *Kohatsu* v. *United States*, 351 F.2d 898, certiorari denied, 384 U.S. 1011.

Tenth Circuit: *United States* v. *Bettenhausen*, 499 F.2d 1223.

2. Recognizing that the agents' interview in this case did not rise to the level of a custodial interrogation, petitioner nevertheless argues (Br. 8–18) that full *Miranda* warnings must be given whenever an investigation reaches what he describes as an "accusatory" or "critical" stage. His contention, however, ignores the fact that the privilege against self-incrimination comes into play only when a person is *compelled* to give evidence against himself. In *Miranda*, the Court held that custodial interrogations are inherently compelling and render statements involuntary as a matter of law unless the subject is advised of his constitutional right to remain silent. But the fact that the suspicions of law enforcement authorities may have focused upon a particular individual and that they thereafter question him in a non-custodial setting does not endanger his constitutional rights unless the particular circumstances of the case indicate that the individual was compelled to make the statements.

In the course of their work, law enforcement officers have occasion to interview many persons whom they may regard with varying degrees of suspicion or "focus." However, the shifting developments in a criminal investigation cannot be the basis upon which it is determined to warn an individual of his constitutional rights. As Judge Friendly noted in *United States* v. *Hall*, 421 F. 2d 540, 544 (C.A. 2), certiorari denied, 397 U.S. 990, "a standard hinging on the inner intentions of the police * * * fail[s] to recognize *Miranda's* concern with the coercive effect of the 'atmosphere' from the point of view of the person being questioned."

Indeed, petitioner's "focus" test is expressly refuted by the Court's statement in *Miranda* that police "inquiry of persons not under restraint" or "other general questioning of citizens in the fact-finding process is not affected by [this] holding" (384 U.S. at 477). The bright line established by *Miranda* is that the warnings need only be given when the individual is "taken into custody or otherwise deprived of his freedom of action in any significant way" (*id.* at 444). Thus, in non-custodial situations, the only relevant question under the Fifth Amendment is whether the individual's statements are voluntary. The mere fact that he might not have cooperated with the law enforcement officers had he known that their investigation focused upon him does not establish as a matter of law that he has been coerced into waiving his Fifth Amendment rights.

Moreover, the circumstances of this case demonstrate that petitioner cannot even meet his proposed

"focus" or "critical stage" test. At the time of the agents' interview, the tax investigation of petitioner was in its earliest stages, and the agents had not determined whether the case would ever ripen into a recommendation for criminal prosecution. Although petitioner attempts to characterize this case as "exclusively criminal" (Br. 8), every criminal tax investigation has a civil aspect, because the taxpayer is liable, at all events, for any tax he evaded. See *United States* v. *Stribling*, 437 F.2d 765, 773 (C.A. 6), certiorari denied, 402 U.S. 978."

Finally petitioner relies (Br. 11) upon *Escobedo* v. *Illinois*, 378 U.S. 478, a case that this Court has stated is not to be broadly extended beyond its particular facts (*Michigan* v. *Tucker*, *supra*, 417 U.S. at 438). At all events, *Escobedo* does not support the imposition of *Miranda* warnings in a non-custodial setting. There, the "suspect * * * [had] been taken into police custody, the police * * * [carried] out a process of interrogations that lends itself to eliciting incriminating statements, the suspect * * * [had] requested and been denied an opportunity to consult with his lawyer, and the police * * * [had] not effectively warned him of his absolute constitutional right to remain silent" (378 U.S. at 490–491). While petitioner (Br. 10–12) emphasizes the references in *Escobedo* to an "investigation * * * [which] has begun to focus on a particular suspect" (*id.* at 490),

[11] Similarly, the fact that petitioner was also investigated because of alleged involvement in narcotics dealing does not establish that this tax case was "exclusively criminal" in character. See *United States* v. *Moore*, 485 F.2d 1165, 1167 (C.A. 5).

the Court was careful to point out in *Miranda* that its statement in *Escobedo* regarding an investigation which had focused on an accused meant no more than "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda* v. *Arizona, supra,* 384 U.S. at 444 and n. 4. As Judge Friendly observed in *United States* v. *Hall, supra,* 421 F.2d at 544: "The test [for determining 'custody'] must thus be an objective one. Clearly the Court [in *Miranda*] meant that *something* more than official interrogation must be shown. It is hard to suppose that suspicion alone was thought to constitute that something; almost all official interrogation of persons who later become criminal defendants stems from that very source" (emphasis in original). See also *Lowe* v. *United States,* 407 F.2d 1391, 1393 (C.A. 9); *United States* v. *Squeri,* 398 F.2d 785, 790 n. 1 (C.A. 2).[14]

[14] None of the other cases relied upon by petitioner (Br. 17) supports the argument that *Miranda* warnings are required when an investigation reaches a "critical" stage. Like *Escobedo*, those decisions all involve either "points of time at or after the initiation of adversary judicial criminal proceedings" (see *Kirby* v. *Illinois*, 406 U.S. 682, 689), or situations where the defendant was in police custody.

Perhaps the case that comes closest to supporting petitioner's contention in this respect is *United States* v. *Mandujano*, 496 F.2d 1050 (C.A. 5), certiorari granted, 420 U.S. 989, upon which petitioner relies (Br. 34, 36). There, the court of appeals held that grand jury witnesses who are "putative defendants" must be given full *Miranda* warnings prior to being questioned before the grand jury. For reasons set forth at some length in our brief in *Mandujano* (No. 74-754), the "focus" or "putative defendant" rationale no more justifies a requirement of full *Miranda* warnings for grand jury witnesses than it does in the present context.

B. A SPECIAL AGENT'S NON-CUSTODIAL INTERVIEW OF A TAXPAYER IS NOT SO INHERENTLY COERCIVE AS TO REQUIRE THE AGENT TO WARN THE TAXPAYER OF HIS CONSTITUTIONAL RIGHTS

It would seem clear that the only justification for introducing the strict prophylactic requirements of *Miranda* into the context of the normal, non-custodial tax investigation would be if the manner in which such investigations are typically conducted entails a high incidence of actual or potential abuse, as was found to be the case with incommunicado police interrogation in *Miranda*. But there is nothing in the typical interview by a special agent of the Internal Revenue Service, or in the particular interview in this case, that is so inherently coercive as to warrant application of the *Miranda* procedural safeguards.

1. Here, the agents did not subject petitioner to any psychological pressures or deceptive interrogation techniques that might have impaired his ability to make rational judgments or have misled him. Unlike the relentless incommunicado questioning recommended by the police manuals considered in *Miranda*, the agents conducted the interview in a congenial manner at the house of a friend of petitioner. During the interview, petitioner was not threatened in an isolated environment; in fact, his friend continued to remain on the premises. In addition, petitioner either refused to or could not respond to several of the agents' questions, and in those instances they did not press him any further (A. 59-60).[15] Finally, near the end of the

[15] The agent testified that he interviewed petitioner at the home in which he was staying rather than at the liquor store that was his place of business in order to avoid any possible embarrassment to petitioner (A. 13).

interview, petitioner stated to the agents that his answers were given of his own volition and that the agents had not subjected him to any threats or duress (Tr. 85). Thus, under no stretch of the imagination can petitioner be equated to the individual described in *Miranda,* who is "swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion" (384 U.S. at 461). Under these circumstances, the court of appeals properly concluded (Pet. App. A 3a–4a) that the "interview had none of the indicia of coercion that motivated the *Miranda* scrutiny of investigative methods and thus it cannot be seriously argued that [petitioner] was 'compelled' to answer any questions." [16]

2. The considerations that support affirmance of the decision below on the facts of this particular case also demonstrate the unwisdom of any extension of the *Miranda* rule to non-custodial federal tax inves-

[16] Although our primary position is that a special agent is not required to give a taxpayer any warnings of his constitutional rights unless the taxpayer is taken into custody or if there is other evidence of coercion, it is not without significance that the agents initially advised petitioner that their function was to investigate criminal tax fraud, that he could not be compelled to supply any incriminating information, that any information could be used against him in a criminal proceeding, and that he had a right to consult with a lawyer. As we discuss in Part C, *infra*, this "modified *Miranda*" warning was adopted by the Internal Revenue Service in 1968. While we do not believe that the Internal Revenue Service is required to give such a warning, its use in this case is additional evidence of the non-coercive character of the agents' interview. See *United States* v. *Caiello*, 420 F.2d 471, 473 (C.A. 2), certiorari denied, 397 U.S. 1039.

tigations. On the whole, the typical interview by a special agent is not at all intimidating in the fashion of police station interrogation to which a suspect is involuntarily brought. Unlike incommunicado police questioning, which is continuously pursued to bring the guilty to book as quickly as possible, a criminal tax investigation involves the gathering and analysis of a complex set of facts, a process that usually lasts several years before any decision whether to formally charge the taxpayer.[17] The taxpayer in a criminal tax investigation is not pressured to make quick admissions at the outset of the inquiry.

Similarly, in contrast to police interrogations, which usually involve investigations into conduct of a concededly criminal character, a tax inquiry focuses upon the financial affairs of the taxpayer in order to determine his correct tax liability. It is not unreasonable to assume that a taxpayer possesses the most reliable information concerning the subject of the agent's inquiry. Indeed, pursuant to the requirements of Section 6001 of the Internal Revenue Code, "Every person liable for any tax * * * shall keep such records * * * and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe." Moreover, the questions posed by a special agent to a taxpayer are little more than adjuncts to the questions on the income tax return itself and are

[17] Here, in a relatively simple case involving an individual's tax liability for two years, petitioner was not arrested until ten months after the interview. See also *Cohen* v. *United States*, 405 F.2d 34 (C.A. 8), certiorari denied, 394 U.S. 943 (investigation lasted two and a half years).

one means by which the Treasury insures that taxpayers file accurate returns under our self-reporting system. That system cannot function effectively without taxpayer cooperation with the Internal Revenue Service.

Moreover, the development of a criminal tax case proceeds gradually, and the decision to assign a special agent is not decisive that the taxpayer will be prosecuted. While there is always the possibility that the special agent's work will result in a criminal prosecution, the same can be said of the audit conducted by the ordinary revenue agent. See *Mathis* v. *United States, supra,* 391 U.S. at 4. Both these officials employ the interview in order to obtain additional information to corroborate the taxpayer's own reported income and claimed deductions. Since the vast majority of investigations result in either civil consequences or no consequences, it hardly seems appropriate to encumber the non-custodial audit interview with full-blown *Miranda* warnings simply because a special agent has entered the case.[18] See, *e.g., United States* v. *Prudden,* 424 F.2d 1021, 1028–1029 (C.A. 5), certiorari denied, 400 U.S. 831; *United States* v. *Mackiewicz,* 401 F.2d 219, 222 (C.A. 2), certiorari denied, 393 U.S. 923; *Morgan* v. *United States,* 377 F.2d 507, 508 (C.A. 1).

[18] In 1972, the Internal Revenue Service initially screened 132,000 allegations of tax fraud, completed 8,882 investigations, and recommended prosecution in 1,777 cases. Indictments were secured in 1,074 cases; 772 defendants pleaded guilty and 113 were convicted following trial. See Annual Report of the Commissioner of Internal Revenue 17 (1972).

Finally, unlike police interrogations, the special agents' interviews at issue here are informal and are conducted in a relatively friendly manner. Such interviews are usually conducted in the familiar surroundings of the taxpayer's home or office. Even if it is held at the agent's office, the interview is typically pursuant to an appointment arranged in advance. These characteristics are not only evident from the facts of this case but from the circumstances considered in the decisions of the nine other circuits that have held that a special agent is not required to warn a taxpayer of his rights in accordance with *Miranda* prior to interviewing him in a non-custodial setting.[19] None of those cases involved conduct by the agents that could remotely be deemed overbearing or coercive. Thus, it can be safely concluded that, in light of the large number of cases presented to the lower courts involving this question, a special agent's interviews do not require the imposition of *Miranda* warnings to dispel the compulsion deemed to be present in actual custodial situations. While there may be instances in which improper pressure is brought to bear upon a taxpayer under investigation, those cases can be appraised under the pre-*Miranda* voluntariness test in order to determine whether compulsion existed under the totality of their particular circumstances. See, *e.g., United States* v. *Jaskiewicz,* 433 F.2d 415, 420 (C.A. 3), certiorari denied, 400 U.S. 1021; *Schlinsky* v. *United States,* 379 F.2d 735, 738 (C.A. 1), certiorari denied, 389 U.S. 920.

[19] See notes 11 and 12, *supra.*

The application of the voluntariness test to the interview of a taxpayer by a special agent is supported by the directly analogous situation considered in *Schneckloth* v. *Bustamonte,* 412 U.S. 218. There, the Court held that an individual who was not in custody could validly consent to a search of his automobile even though he had not been told that he had a right to withhold his consent. In so holding, the Court relied upon its pre-*Miranda* decisions (412 U.S. at 227–234) applying the traditional voluntariness test by assessing the totality of circumstances in a given case to determine whether a defendant's statements were coerced. As the Court there observed, in terms which are equally appropriate to this case, "since consent searches will normally occur on a person's own familiar territory, the specter of incommunicado police interrogation in some remote station house is simply inapposite" (412 U.S. 247). Thus, just as there was no reason for the Court to conclude in *Schneckloth* that responses to a policeman's questions were presumptively coerced, here too there is no basis to petitioner's claim that a special agent's interview is inherently coercive in the absence of warnings.

3. Petitioner argues (Br. 18–32) that an interview by an Internal Revenue Service Agent has a "psychologically coercive effect upon the taxpayer" because of the self-declaring nature of the tax laws (Br. 18–19), the assumption by the taxpayer that he is merely discussing a civil obligation (Br 20–22), the complexity of the tax laws and the ignorance of the average per-

son as to what constitutes a criminal violation or an incriminating statement (Br. 22–25), and the suggestion that taxpayers fear that non-cooperation will prove very expensive and embarrassing (Br. 27–29). But these factors do not establish the atmosphere of coercion upon which *Miranda* rests. The fact that a person may believe that he is obliged to cooperate with law enforcement officers does not render his statements involuntary unless the officers are responsible, either by word or deed, for the individual's misapprehension. The compulsion must come from the officers, not from the inner feelings of the interrogee. Indeed, if that were not the case, every instance of police questioning in which a person voluntarily made incriminating statements would be deemed to be coercive in the absence of warnings—a proposition the Court has emphatically rejected. As this Court observed in *Shotwell Mfg. Co.* v. *United States,* 371 U.S. 341, 348, "A coerced confession claim * * * always involves this question: did the *governmental conduct* complained of 'bring about' a confession 'not freely self-determined'?" (emphasis supplied). See also *Rogers* v. *Richmond,* 365 U.S. 534, 544."

4. The sole appellate authority supporting petitioner's position that a special agent must give a

[21] Petitioner's generalized allegation (Br. 18) that the practices of the Internal Revenue Service are "designed to jeopardize constitutional rights" is wholly without foundation. In support of his contention, petitioner refers to the following facts: (1) ordinary revenue agents are directed to suspend their investigation, without disclosing the reason for such action, when they discover what they believe to be indications of fraud (Br. 26); (2) agents

Miranda warning to a taxpayer under investigation is *United States* v. *Dickerson,* 413 F.2d 1111 (C.A. 7). There, a divided panel of the Seventh Circuit held that *Miranda* turned neither on the custody of the defendant nor on the inherent compulsion of incommunicado police station interrogation, but on the suspect's inability to waive his rights intelligently when "confronted with governmental authority in an adversary situation * * *" (413 F.2d at 1114). Accordingly, that court concluded that the agents must give the taxpayer *Miranda* warnings upon their first contact with him after the case is referred to the Intelligence Division for criminal investigation.

Contrary to the Seventh Circuit's analysis, *Miranda* turned on the coercive atmosphere of in-custody interrogation and not on the fact that an "adversary

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are directed to attempt to obtain figures as to cash on hand (Br. 27); (3) they should display pleasant emotions in interviews with the taxpayer (Br. 27, n. 19); and (4) they generally make their first contact with the taxpayer and not with his representative (Br. 26). None of these practices, either by themselves or in the aggregate, supports petitioner's claim that "[a]gents are trained to discourage the free exercise of constitutional rights" (Br. 26).

An Internal Revenue Service agent is not obligated to disclose all of his suspicions to an individual under investigation, any more than any other type of law enforcement officer. Nor is there anything improper in the agent seeking cash-on-hand figures for use in reconstructing income; such computations, it may be noted, have civil as well as criminal consequences. Similarly, it can hardly be contended that an agent's friendly demeanor constitutes a violation of constitutional rights. Finally, an initial meeting by the agent with the taxpayer rather than his representative does not infringe upon the taxpayer's rights where no right to counsel exists. These assertions by petitioner of violations of his constitutional rights border on the frivolous.

situation" existed between an individual and law enforcement officers. As we have pointed out, the Court in *Mathis* v. *United States, supra,* 391 U.S. at 4–5, emphasized the custodial aspect of the interrogation of the defendant rather than his confrontation with governmental authority during a routine civil audit. Similarly, in *Orozco* v. *Texas,* 394 U.S. 324, the Court upheld the defendant's *Miranda* claim only on the ground that he was under arrest and therefore not free to leave during the interrogation. Finally, in *Hoffa* v. *United States,* 385 U.S. 293, the Court rejected the defendant's contention that, although he was not under arrest or in custody at the time of his incriminating statements to an undercover agent, he was entitled to *Miranda* warnings because the government confronted him by means of an undercover agent. It was the compulsive aspect of custodial interrogation, and not simply the contact between the defendant and the law enforcement officers, which led the Court to impose the warnings prescribed in *Miranda.*

Likewise, the *Dickerson* court's statement that "[i]ntelligent exercise or waiver of the Fifth Amendment privilege is the heart of [this] Court's concern in *Miranda*" (413 F.2d at 1114) misreads the Court's opinion in that case. In discussing the exercise of the Fifth Amendment privilege, *Miranda* did not bar as unconstitutional "[a]ny statement given freely and voluntarily without any compelling influences" (384 U.S. at 478), even though such statements were given without full knowledge of their consequences. Simi-

larly, the Court in *Hoffa* v. *United States, supra,* 385 U.S. at 303–304, rejected the notion that because a defendant's conversations with an undercover agent occurred without "intelligent waiver," the resulting evidence should be excluded. Instead, the Court premised its decision entirely on the ground that the defendant's incriminating statements were not "the product of any sort of coercion, legal or factual" (385 U.S. at 304).[22] As the court of appeals correctly concluded in the instant case, the *Dickerson* emphasis upon intelligent waiver "confuses the requisites of *compulsion* which bring to bear Fifth Amendment interests with the requisites of a *waiver* of Fifth Amendment rights once those rights attach" (Pet. App. A 4a; emphasis in original).

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[22] Subsequent to *Dickerson*, the Seventh Circuit held in *United States* v. *Oliver*, 505 F.2d 301, that the same Internal Revenue Service warning given in this case was inadequate under *Miranda*. It accordingly reversed a conviction for income tax evasion based upon the taxpayer's statements to special agents. *Oliver* is, however, significantly different factually from the instant case. In *Oliver*, while the defendant was questioned at the office of the special agents, a person appeared and claimed to have a message for him from his attorney. The defendant was not advised of this fact, and the interview continued (see 505 F.2d at 304–306). In reversing the conviction, the Seventh Circuit held that the defendant was, in effect, deprived of his freedom of action in a significant way during the interview and should have had *Miranda* warnings rather than the "modified *Miranda*" warnings employed by the Internal Revenue Service in this case. Although the Seventh Circuit noted its disapproval of the Internal Revenue Service's failure to instruct its special agents to give full *Miranda* warnings (505 F.2d at 304 n. 6), the decision turned largely on the peculiar quasi-custodial setting of the interview.

C. IF SOME FORM OF WARNING TO A TAXPAYER UNDER INVESTIGATION IS REQUIRED AT HIS INITIAL INTERVIEW BY A SPECIAL AGENT, THE AGENTS' WARNING IN THIS CASE WAS SUFFICIENT TO INSURE THAT PETITIONER'S STATEMENTS WERE VOLUNTARY

1. In *Miranda,* this Court required law enforcement officers to give the following warnings prior to questioning a suspect in a custodial interrogation (384 U.S. at 444):

> [T]he person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.

Here, at the outset, the special agents advised petitioner of his rights in the following terms (Pet. App. A 4a n. 6):

> Under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding.

A simple comparison between this Court's *Miranda* warnings and the warning employed by the special agents demonstrates that the warnings in this case substantially conform to the *Miranda* formula. One difference involves the unqualified right of silence

stated in the *Miranda* formulation; in the warning administered by Internal Revenue Service special agents, the taxpayer is advised that he cannot be compelled to answer any questions or to submit any information if such answers or information might tend to incriminate him. Although petitioner argues (Br. 37–38) that the agents' warning was inadequate to describe his "right" to total silence, the prophylactic warning of a right to remain silent is addressed to the incommunicado custodial setting where the protection of the interrogee was deemed to be best achieved if he were advised that he may say nothing to the police.

But it is the Internal Revenue Service formulation and not the *Miranda* warning that accurately states the right safeguarded by the self-incrimination privilege, and, in the non-custodial setting, the prophylactic need for the broader formulation is absent. Indeed, the warning employed in this case conforms to the fact that a taxpayer ultimately has no right to refuse to answer any and all of a revenue agent's questions,[23] but may only withhold information that might incriminate him.[24]

[23] To the extent that information is not covered by the taxpayer's Fifth Amendment privilege, an agent can compel testimony and production of documents by use of the summons power. Such summonses are enforceable in the district courts, and the summoned party must obey under pain of contempt. See Sections 7602 and 7604 of the Internal Revenue Code.

[24] The second element of the agent's warning—that anything petitioner said could be used against him in a criminal proceeding—is fully equivalent to the *Miranda* requirements that the individual be warned that any statement he does make may be used as evidence against him. Indeed, it gives specific notice that a criminal investigation is in progress. Petitioner was also advised of the criminal aspects of the investigation when the special agents informed him that their function was to investigate the possibility of criminal tax fraud (A. 15).

The *Miranda* requirement that the individual be advised that he has a right to the presence of an attorney was met by the agents' admonition that petitioner could, if he desired, seek the assistance of an attorney before responding to their questions. The only element missing from the agents' warnings was a statement that petitioner had a right to an appointed lawyer. In the non-custodial setting of the tax interview, the need for counsel to neutralize potentialities for coercion is, of course, dramatically diminished. Moreover, the absence of advice regarding appointment of counsel for indigents is singularly unlikely to be significant in the tax investigation context, since a person under investigation for criminal tax violations is ordinarily able to afford the services of an attorney, unlike persons suspected of many other kinds of offenses. Indeed, there is no presently established procedure for providing appointed counsel at this stage of an investigation for persons financially unable to obtain adequate representation, nor any Sixth Amendment right to such appointment. See 18 U.S.C. 3006A(a); *Kirby* v. *Illinois,* 406 U.S. 682. Thus, in all important respects, the agents' preliminary warnings to petitioner were sufficient to insure—if insurance of this sort be needed—that his statements to them were voluntary.

2. The warnings given by the agents in this case reflect a procedure adopted by the Internal Revenue Service in 1968 (A. 67–68). As the accompanying public announcement correctly stated, this procedure "goes beyond most legal requirements that are designed to advise persons of their rights" (A. 67). However, the Internal Revenue Service adopted the warning procedure in order to eliminate possible uncertainty surrounding the application of this Court's *Miranda* decision to federal tax investigations. The Court's decision only 23 months later in *Mathis* v. *United States, supra,* holding that a taxpayer incarcerated in a state prison was entitled to *Miranda* warnings from an ordinary revenue agent, in fact refused to accept the government's argument that *Miranda* had no application to routine tax investigations, the Court expressly rejecting "the contention that tax investigations are immune from the *Miranda* requirements for warnings to be given a person in custody" (391 U.S. at 4).

Although we believe that *Mathis* turned on the custodial aspects of the interview, the Service was originally concerned that it augured an extension of *Miranda* to non-custodial interviews by its agents. Moreover, at the time *Miranda* was decided, the Service found that the practices of its special agents with respect to warning taxpayers under investigation of their constitutional rights varied widely from district

to district. Accordingly, it adopted the warnings used in this case out of an abundance of caution, in order to establish a uniform administrative practice and to insure that its criminal tax prosecutions would not be jeopardized. In light of the virtual unanimity of the courts of appeals in holding that such warnings are not required in a non-custodial setting, it appears that the reasons for the adoption of the warning may no longer exist.[25]

We therefore submit that the Internal Revenue Service should now be free, if it concludes that such a course is wise, to adopt a uniform policy dispensing with the warning, and we urge this Court to so hold. However, if some form of warning to the taxpayer under investigation by special agents is deemed to be required, it is beyond question that the warning employed in this case is more than sufficient to insure that taxpayers' statements under these circumstances will be voluntarily made.

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[25] Three courts of appeals have indicated that when the special agents fail to give the warnings required by the procedures adopted by the Internal Revenue Service, statements obtained from the taxpayer must be suppressed (on due process rather than self-incrimination grounds). See *United States* v. *Heffner*, 420 F.2d 809 (C.A. 4); *United States* v. *Leahey*, 434 F.2d 7 (C.A. 1); and *United States* v. *Sourapas*, 515 F.2d 295 (C.A. 9). Contra: *United States* v. *Leonard*, C.A. 2, No. 75–1153, decided August 28, 1975, slip op. 5861 (dictum); *United States* v. *Fukushima*, 373 F. Supp. 212 (D. Hawaii). While we disagree with such holdings, the question whether agents must comply with the currently announced warning procedures adopted by the Internal Revenue Service is not at issue in this case.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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